154 U.S. 418
154 U.S. 417

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. 1169.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY, TRUSTEE, AND THE TYLER SOUTHEASTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED MARCH 31, 1894.

(15,553.)

(15,553.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. 1169.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY, TRUSTEE, AND THE TYLER SOUTHEASTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	*a*	*a*
Bill of complaint	1½	1
Exhibit "A"—Mortgage	33	23
"C"—Tariffs and circulars of railroad commission (omitted in printing)	58	—
"C," part III—Tariffs and circulars of railroad commission (omitted in printing)	200	—
"B"—Act establishing railroad commission (omitted in printing)	218	—
Answer of the railroad company	229	37
Order granting leave to file cross-bill	233	39
Cross-bill of railroad company	233½	40
Amendment to bill of complaint	253	52
Amendment to cross-bill	257	55
Motion of defendants to withdraw answer and file demurrer	262	59
Order granting leave to withdraw answer and file demurrer, &c.	263	59

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 6, 1894.

	Original.	Print
Rule setting down cause on bill and answer	266	61
Defendants' demurrer to bill of complaint	267	61
Defendants' demurrer to cross-bill	272	65
Rule filing amended bill of complaint (omitted in printing)	277	—
Rule filing amended cross-bill (omitted in printing)	278	—
Rule filing demurrer to cross-bill (omitted in printing)	279	—
Rule filing demurrer to bill of complaint (omitted in printing)	280	—
Rule setting down demurrer to bill of complaint for argument	281	67
Rule setting down demurrer to cross bill for argument	282	68
Rule on defendants declining to further answer bill and cross-bill and submitting cause for final decree	283	68
Final decree	284	68
Opinion (omitted in printing)	289	—
Assignment of errors	314	71
Application for appeal	315	72
Bond on appeal	316	73
Citation to Gilbert, Perkins & Gilbert and service of same (omitted in printing)	317	—
Citation to the Mercantile Trust Co. and service of same (omitted in printing)	318	—
Certificate (omitted in printing)	319	—
Stipulation to omit parts of record in printing	320	74
Exhibit H—Annual report for year 1801	322	76
I—Annual report for year 1802	323	102

a

Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court of fifth circuit and western district of Texas, at the city of Austin, in said circuit and district, on the 6th day of February, 1893, it being the first Monday in February and the day fixed by law for commencing a regular term of said court at said place—present, the Hon. Andrew P. McCormick, one of the circuit judges of the United States for the fifth circuit; A. J. Evans, United States attorney for said district; Paul Fricke, United States marshal for said district, and B. G. Duval, clerk of said court—when and where the following proceedings were had, to wit:

In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit. In Equity.

The Mercantile Trust Company, Trustee, Complainant, *against* The Tyler Southeastern Railway Company, John H. Reagan, and Others, Defendants.	No. 189.

1 No. 189. Equity.

In the United States Circuit Court for the Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 189.

Bill of Complaint.

Farrar, Jonas & Kruttschnitt, 33 Carondelet street, New Orleans, La.; Alexander & Green, 120 Broadway, New York city, and West & McGown, Austin, Texas, complainant's solicitors.

John F. Dillon, John J. McCook, E. B. Kruttschnitt, of counsel.

Filed Apl 30, '92.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

1½ To the judges of the circuit court of the United States for the western district of Texas, in the fifth circuit, sitting in equity:

The Mercantile Trust Company, a corporation organized and existing under the laws of the State of New York, brings this, its bill of complaint, against the Tyler Southeastern Railway Company, a corporation organized and existing under the laws of the State of Texas, and a citizen and resident of said State; John H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting the railroad commission of Texas, organized under an act of the legislature of the State of Texas, approved April 3, 1891, and Charles A. Culberson, a citizen and resident of the State of Texas, and attorney general of said State.

And thereupon humbly complaining, your orator, The Mercantile Trust Company, shows your honors as follows:

First. Your orator is a corporation organized and existing under the laws of the State of New York, and a citizen and a resident of said State; that the defendant, The Tyler Southeastern Railway Company, is a corporation organized and existing under the laws of the State of Texas, and is a citizen and resident of said State; that the defendants, John H. Reagan, William P. McLean and L. L. Foster are citizens and residents of the State of Texas, and constitute the railroad commission of Texas, and they derive any and all power, authority and character as such commission, and in respect to the matters hereinafter complained of, from and under an act of the legislature of the State of Texas, approved April 3, 1891, entitled "An act to establish a railroad commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented, and reasonable freight and passenger tariffs may be es-

tablished; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads, and afford railroad companies and other parties adequate remedies; to prescribe
2 penalties for the violation of this act, and to provide means and rules for its enforcement." A copy of said act, marked "Exhibit B," is filed herewith as part hereof.

That said act fixes and establishes the office of said railroad commission of Texas, at the city of Austin, in the county of Travis, in said State of Texas; and said commission, and said Reagan, McLean and Foster as such commissioners, are residents and inhabitants of said Travis county and of the western district of said State of Texas.

That the defendant, Charles A. Culberson, is a citizen and resident of the State of Texas, and of the said city of Austin and county of Travis in said State, and an inhabitant of the western district, and is the attorney general of said State, and claims as such attorney general the right to exercise the powers and to perform the duties purporting to be conferred and imposed upon the attorney general of said State by said act of the legislature of Texas last hereinabove referred to.

Second. That the defendant, The Tyler Southeastern Railway Company, owns and operates a line of railroad and property within the State of Texas, particularly described as follows: Its line of railway beginning in the city of Tyler, Smith county, Texas, and running thence in a southerly and southeastwardly direction, through the counties of Smith, Cherokee and Angelina, to Lufkin, in said last-named county, a distance of about ninety miles; together with all of the franchises, property and appurtenances thereof, connected therewith, or thereto appertaining, as described in the second mortgage of the said railway company, hereinafter referred to, copy whereof is attached hereto as Exhibit "A."

Third. That under and in pursuance of the powers conferred upon said defendant railway company by its charter and the laws of the State of Texas, and pursuant to due corporate action the said defendant railway company did, on or about the 13th day of January, 1891, make, execute and deliver, for value, to your orator, and your orator now owns and holds in trust its four (4) per cent. second-mortgage income bond dated on the said 13th day of Janu-
3 ary, 1891, for the sum of three hundred and thirty thousand dollars ($330,000), payable to the Mercantile Trust Company or bearer, or, if registered, to the registered holder thereof, on the first day of November, 1989, in gold coin of the United States, at the office of the said trust company in the city of New York, with interest on said principal sum from the first day of January, 1891, at such rate not exceeding four per cent. per annum, payable in like gold coin, as the net earnings of the railway property and business of the railway company should suffice to pay, as the same might be determined and ascertained by the board of directors of the said railway company in the manner provided in said bond and in the mortgage hereinafter mentioned.

And for the purpose of securing said bond, said railway company,

pursuant to, and in accordance with like charter and corporate authority, made, executed and delivered to your orator its indenture of mortgage, or deed of trust, known as its second mortgage, conveying to your orator, in trust, for the security of the holder of said bond, all of the lines of railroad, property, appurtenances and franchises hereinbefore referred to, together with all the rents, tolls, earnings, incomes, issues and profits thereof, all of which are more specifically described in said mortgage, a copy whereof, including copy of said bond, is filed herewith as aforesaid, marked Exhibit "A."

Fourth. That the obligation of the defendant railway company to pay the interest upon the bond made to your orator as aforesaid, and secured by said mortgage to your orator, and the lien of said last-mentioned mortgage, are subordinate and inferior to the obligation of the said railway company to pay the interest at 4 per cent. per annum upon its indebtedness upon a certain outstanding 4 per cent. first-mortgage gold bond in the principal sum of six hundred and sixty thousand dollars ($660,000), secured by its certain indenture of mortgage, or deed of trust, dated January 13, 1891, and executed to the Central Trust Company of New York, as trustee, to secure said 4 per cent. first-mortgage gold bond, and also are subject to all obligations and liens for, in respect to, and upon the cars and equipment of the said railway company under car trust or other charges prior to the mortgage securing said second-mortgage income bond.

4 Your orator prays leave upon the hearing herein to refer to said first mortgage of the defendant railway company, and to such car-trust agreements as affect or charge the equipment of the said railway company in the manner set forth in said second mortgage.

Fifth. Your orator further says that the twenty-second legislature of the State of Texas passed an act entitled "An act to establish a railroad commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act and to provide means and rules for its enforcement," which said act was approved April the 3d, 1891, from which date it took effect. A copy of said act of the legislature of the State of Texas last mentioned, marked "Exhibit B," is herewith filed as part hereof. That the said act was passed and adopted by said legislature in claimed pursuance of the powers conferred upon said legislature by an amendment to the present constitution of the State of Texas, which amendment was adopted at an election held throughout said State on the 5th day of November, 1890, and said amendment is as follows:

Article 2. Railroads heretofore constructed or which may hereafter be constructed in this State are hereby declared public highways and railroad companies common carriers. The legislature shall pass laws to regulate railroad freight and passen-

ger tariffs, to correct abuses, prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies, invested with such powers as may be deemed adequate and advisable.

That the said Reagan, McLean and Foster were appointed and qualified as such commissioners in the manner prescribed by section 1 of said act and organized said commission on the 19th
5 day of June, 1891, from which date they have assumed to be and act as the railroad commission of Texas, and are exercising and claiming the right to exercise the power and functions conferred, or purporting to be conferred, by said act upon said railroad commission. That said act purports to confer the power and authority upon said railroad commission of Texas and make it the duty of the commission, among other things, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs upon the railroads in said State, and to enforce the same by having penalties inflicted, as by said act prescribed, through the proper courts having jurisdiction. To fairly and justly classify and subdivide all freight and property, of whatsoever character that may be transported over the railroads in said State into such general and special classes or subdivisions as may be found necessary and expedient. To fix to each class or subdivision of freight a reasonable rate for each railroad, subject to said act, for the transportation of each of said classes and subdivisions. To fix different rates for different railroads, and for different lines under the same management, or for different parts of the same line, if found necessary to do justice. To fix and establish for all or any connecting lines of railroad in said State reasonable joint rates or freight charges for the various classes of freight and cars that may pass over two or more lines of such railroad; and if any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising through the transportation of freight, passengers or cars over their lines, the commission is required by said act to fix the *pro rata* part of such charges to be received by each of said connecting lines.

Said act also provides in effect that until the commission shall make the classifications and schedules of rates therein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject to said act, and fix rates to be charged by such roads therefor,
6 and such classification and rates shall be put in effect in the manner provided for general classifications and schedules of rates. And the said act provides that the said commission shall have power, and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classi-

fication or rates shall be put into effect in the same manner as the original. And the said commission is authorized by said act to adopt and enforce such rules, regulations and modes of procedure as it may deem proper, and to hear and determine complaints that may be made against the classification, or the rates, rules, regulations and determinations of the commission.

Said act also purports and attempts to confer upon the commission the power to make reasonable and just rates and charges for each railroad subject to said act for the use or transportation of loaded or empty cars on its road, and to establish for each railroad, or for all railroads, the like reasonable rates for the storing and handling of freight and for the use of cars not unloaded at forty-eight hours' notice to the consignee, not to include Sundays. And the said act also purports to confer upon the commission the power, and to make it the duty of said commission, to establish reasonable rates for the transportation of passengers over each or all of the railroads subject thereto, not to exceed the rates fixed by law, and also to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject thereto.

Said act, in effect, provides (section 4) that, before any rates shall be established under said act, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed, and the said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done, and that it shall have process to enforce the attendance of the witnesses, which process shall be served as in civil cases.

Sections 5, 6 and 7 of said act are as follows:

"SEC. 5. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of said action shall be held to be conclusive, and deemed and accepted as reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 thereof.

"SEC. 6. If any railroad or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms, and such action so appealed shall have precedence in said appellate court of all causes of a different character therein pending: Provided, that

if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

"SEC. 7. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them."

By section 8 of said act it is made the duty of the said commission as soon as the classification and schedule of rates provided for in said act are prepared by them, to furnish each railroad subject to the provisions of said act with a complete schedule in suitable form showing the classification of freight made by them and the rates fixed by said commission to be charged by such roads for the transportation of each class of freight and cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads, at its principal office in said State, if it has such office in said State, and if not, then to any agent of said company, which said schedule, rules and regulations shall take effect at the date which may be fixed by said commission not less than twenty days; and it is by said act made the duty of said railroad company to cause said schedules to be printed in type of a size not less than pica, and to have the same posted in a conspicuous place at each of its depots so as to be inspected by the public. And the said commission by said act are empowered to at any time abolish, alter or in any manner amend the said schedules, or abolish or amend any such regulations; and, in that event, certified copies of the schedules, rules or regulations showing the change therein shall be delivered to each road as therein specified.

Neither said act nor any other law of the State of Texas requires said commission to publish schedules and rates specified in said act before the taking effect of the same, or to do any other act or thing in respect thereto, except as required by section 8 of said act hereinbefore recited.

It is provided in section 14 of said act, in effect, that if any railroad company subject to said act, or its agent or officer, shall thereafter charge, collect, demand or receive from any person, company, firm or corporation, a greater rate charged for compensation than that fixed and established by the railroad commission for the transportation of freight, passengers or cars or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars for any other service performed or to be performed by it, such railroad company and its agent or officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than $100 nor more than $5,000.

By section 17 of said act, it is provided in effect that in case any railroad subject to said act shall do or cause to be done, or permit to be done any matter, act or thing in said act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing therein required to be done by it, such railroad shall be liable to

the person or persons, firm or corporation injured thereby, for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or dis-
9 crimination, as by said act defined, then in addition to such damages such railroad shall pay to the persons, firm or corporation injured thereby a penalty of not less than $125 nor more than $500, to be recovered in any court of competent jurisdiction in any county into or through which any railroad may run, provided that such road may show and prove, as a defense to the action for such penalty, that such violation was unintentional and innocently made through mistake of fact; and provided further, that such recovery as therein provided shall in no manner affect a recovery by the State of the penalty denounced for such violation.

By section 18 of said act it is in effect provided that if any railroad as aforesaid, shall wilfully fail in either provisions of said act, or shall do any act therein prohibited, or shall fail or refuse to do any other duty enjoined upon it for which a penalty has not therein been provided for such act or violation, it shall pay to the State of Texas a penalty of not more than $5,000.

By section 19 of such act it is provided in effect that all of the penalties therein provided, except as in section 17, shall be recovered and suits thereon shall be brought in the name of the State of Texas in the proper court having jurisdiction thereof in Travis county, or in any county from or through which such railroad may run, by the attorney general or under his direction.

By section 20 of said act it is provided in effect that on the application of any person, organization or firm, the commissioners shall furnish certified copies of any classifications, rates, rules, regulations or orders, and such certified copies or printed copies published by authority of the commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order or classification therein contained, and which may be in issue in the trial, is the official act of the commission.

Sixth. Your orator further avers upon information and belief that on or about the 21st day of June, 1891, the general freight agent of the defendant railway company, received, through the United States mail, a communication dated June 20, 1891, a copy whereof is as follows:

10 Office of railroad commission of Texas.

AUSTIN, TEX., *June* 20, 1891.

General freight agent T. S. E.

DEAR SIR: In accordance with the requirements of section four of the act creating the railroad commission of Texas, passed at the regular session of the twenty-second legislature, approved April 3, 1891, the railroad commission of Texas will, on Monday, July 6, 1891, begin and continue from day to day, until completed, the classification and subdivision of all freight and property of whatsoever character that may be transported over the railroads of this State, into such general or special classes or subdivisions as may be found

necessary or expedient, and the fixing for each class or subdivision of freight a reasonable rate for each railroad, subject to this act, for the transportation of each said subdivisions or classes; also that at the above-named time and place a special classification and rates of changes thereon, of cotton, grain, lumber and salt will be made. Your attention is also called to section eight of the act aforesaid, which provides that, in all cases where the rates shall not have been fixed by the commission, no changes shall be made, except after ten days' notice to and consent of commission. Therefore, the changing of any rates in force July 10, 1891, except after notice as above provided and the consent of the commission, is unlawful.

Please acknowledge the receipt of this notice, and oblige.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Although said communication did not inform said defendant railway company or its agents of the rates, or the changes in the then existing rates, which said commission proposed or intended to make at said time, still, as your orator is informed and believes, said general freight agent and other representatives of said railway company appeared before said commission at its office in the city of Austin at the time in said notice named, and requested said commission to indicate the rates they proposed to fix, and the changes they proposed to make in the then existing rates, for the transportation of property by said railway company, in order that the railway company should have the opportunity then to present any evidence it might be able to produce, appropriate and
11 material to the action which the commission proposed or intended to take in the premises; which request the commission failed and refused to grant. That the agents and representatives of the railway company were therefore unable to produce testimony, appropriate or material, to any possible action of the commission, but the agents or representatives of said company at said time did present such information, of a general character, to said commission, as to them seemed in any way appropriate or material to the matters upon which the commission had indicated its purpose to act, and as far as possible gave all information requested or suggested by said commission as material to such matters.

Shortly thereafter there appeared in the newspapers of the State a statement which, as your orator is advised and believes, was authorized by said commission, to the effect that the commission invited representatives of towns and cities, boards of commerce or individuals who might desire to present any matter or complaint to the said commission to be present on and after July 6, 1891.

That said defendant railway company did not, as your orator is informed and believes, in any way waive the giving of any notice required by law, but its representative merely appeared before said railroad commission, as did other citizens and inhabitants of the State who had any concern or interest in the proceedings of the commission.

That, as your orator is informed and believes, the said commis-

sion did not, as it had declared its intention in said notice to do, fix said rates or any rates whatever at its said session, or indicate any time when it would fix such rates, but adjourned and deferred action upon the matter stated in said notice indefinitely, and terminated its session without action and without adjournment to any specified day.

That thereafter, and subsequently to July 29, 1891, the general freight agent of the defendant railway company received through the United States mail a communication from the said railroad commission enclosing a proposed schedule of rates on corn, wheat, rye, barley, oats, bran, mill feed, mill stuff, hay, flour and
12 meal in sacks or barrels, and salt in sacks or barrels, which said proposed schedule was accompanied by the following notice:

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 29, 1891.

DEAR SIR: The schedule of rates on the commodities herein named is proposed by the railroad commission of Texas to the general freight agents of the several railroads in Texas for their consideration and such suggestions as they may see proper to make. Action will be had on this schedule August 5, and all communications relating thereto must be received by that date to receive attention of the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

That thereafter and subsequently to the 30th day of July, 1891, said general freight agent of said railway company received, through the United States mail, communications from said commission, including proposed rates on lumber, shingles and cotton, which communications are respectively as follows:

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 30, 1891.

DEAR SIR: The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they may desire to make must reach this office by August the 7th to receive attention from the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 31, 1891.

DEAR SIR: The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they

desire to make must reach this office by August the 6th, to receive attention by the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

13 That the time within which, by the terms of said notice, communications or objections to such proposed rates upon the part of said corailway company, in order to receive consideration by said railroad commission, as appears from the dates and times of the receipt of the said notices by said general freight agent, — was less than ten days. That, as your orator is informed and believes, said commission were requested to extend for ten days the time for hearing prescribed by said notices, which request was refused by said commission. That although ten days' notice thereof was not given, as required by said act of April 3, 1891, the general freight agent of said railway company appeared before said railroad commission, at its rooms in the capitol at Austin, and statements were produced, verified by affidavit, showing the unjust, unreasonable and illegal character of said proposed rates. That the said commission did not, as indicated in said notices and communications last referred to, fix rates on said articles, or any rates whatever, at the time and places, or at either of the times or places in said notices specified.

That thereafter the general freight agent of the defendant railway company received from the said commission, through the United States mails, the several communications, schedules, copies of commodity tariffs, and circulars, copies of which are filed herewith as part hereof marked "Exhibit C." That said communications, schedules, copies of commodity tariffs, and circulars were severally so received on or about the day following their respective dates.

That in addition to the communications, copies of which are so filed herewith, the general freight agent of the defendant railway company and of other railroad companies of Texas have received frequent informal communications from said commission, or from said Chairman Reagan, relating to the tariffs, orders and action of said commission, and to the duties, liabilities and action of the railroad companies in respect thereto and the said general freight agent of the defendant railway company, and the general freight agent of other Texas railroad companies have addressed and sent to the said commission numerous communications, state-

14 ments and protests relating to action proposed and taken by said commission in the making and announcement of its various tariffs and orders herein complained of. To all of said communications, statements and protests, your orator prays leave to refer with the same effect as if the same were herein set forth.

The said commission has never served, or caused to be served, on the defendant railway company, any certified copy of its purported tariffs, or either of them, as required by said act of April 3, 1891, the only pretended service being by mailing to the said general freight agent of mimeograph copies of said tariffs, copies of which are filed within and included in said "Exhibit C." Nevertheless, said commission and said defendant Culberson, attorney gen-

eral, and divers other persons are seeking and attempting to force the said railway company to put and continue the same in effect, and threaten and propose to enforce the same through and by the suits, actions and penalties prescribed by said act of April 3, 1891.

That said railroad commission, without further or other notice, or pretended notice, than those hereinabove set forth, are proposing and threatening and proceeding to make and announce other and further schedules of rates and tariffs upon other commodities.

That the said schedules and copies of commodity tariffs, filed herewith as aforesaid, are promulgated by said commission and intended by them as schedules of the rates of charges, for the transportation of the articles named therein, over railway of defendant company, which rates and charges said commission assumes to establish and fix under the authority purporting to be conferred upon it as such commission by said act of April 3, 1891. And the said commission threatens and intends, under the penalties of the act, to compel said defendant railway company to adopt the said several schedules as rates of charges to be made by it for the transportation of said articles over its railway, and the said defendant railway company has adopted the same, so far as by the terms thereof they have become effected, and proposes and intends to adopt, and, unless restrained by the order of the court, will adopt those still to become effective, as required, or sought to be required by said commission.

Your orator avers, upon information and belief, that none of the rates promulgated or attempted to be promulgated by said commission, and specified in said schedules, were fixed or attempted to be fixed by said commission at any time or place whereof the said defendant railway company had ten days' notice or any specific notice whatever, and that the communications from the said commission, and from its chairman hereinbefore referred to constitute the sole and only notice to said defendant railway company in the premises.

That, as your orator is informed and believes, during the purported hearings before the commission on said proposed tariffs, it was proposed to said commission that if it would grant a reasonable time, estimates would be made showing movements of each of the commodities upon which it was proposed to make tariffs, the rates charged under the then existing tariffs, and the revenues derived therefrom, and showing the revenues which would have been derived if the proposed tariffs of the commission had been applied thereon. Said statement, when furnished to the commission, would not only have shown the effect of said proposed rates, but they could have easily derived therefrom a knowledge and understanding of the effect upon the revenues of the railway companies of any system of rates they might have under consideration. Said offer was declined by said commission, and they proceeded, as aforesaid, to establish and announce said schedules, without having secured any reasonable data, statistics or information to enable them even

to approximate with any degree of correctness the effect of any of the rates considered or established by them.

That, as your orator is informed and believes, at the said sessions of said commission no witnesses were sworn and no evidence introduced, and no formal charges preferred against said defendant company, and any and all persons who desired to be present were allowed to participate in the proceedings. That said commission, although it was fully empowered by law so to do, failed and refused to appoint experts, or to adopt any means of investigating
16 the financial condition and the revenues and resources of the said defendant railway company, or any other railway companies of the State, and failed to make any effort whatever to inform themselves as to whether the conditions were such as to authorize them to make reduction in the rates or in the revenues of the railroads in general, or of said defendant railway company in particular; that at the session of said commission, of which the said defendant railway company, or any other railway companies, were informed, or at which they were represented, no evidence whatever was introduced tending to show that the then existing rates of said defendant railway company were too high, or were unjust or exorbitant, or yielded greater revenue than said defendant railway company was entitled to receive. That the said schedules of rates and charges were so established and promulgated by said commission without any evidence whatever having been taken or adduced before it, which showed or tended to show that said rates and charges were just, fair or reasonable, and the same were so fixed and established notwithstanding that the uncontradicted showing made by the representatives of the railroad companies before said commission tended to show and did show that such rates and charges would be unjust, unfair and unreasonable.

Seventh. That the classifications and schedules of rates and charges so announced and promulgated in and by said commodity tariffs and circulars of said commission, or sought so to be, as hereinbefore shown, are unfair, unjust and unreasonable, and that the same cannot be adopted or put or continued in effect by the defendant railway company without serious and irreparable loss to it, and serious and irreparable injury to and destruction of the property, rights and interests of your orator and the beneficiaries of its trust as hereinafter more fully set forth; that the rates so charged and announced by said commission are not compensatory and are unreasonably low, and that the adoption and enforcement thereof would result, as nearly as can be estimated, in a diminution of the revenues of said defendant railway company aggregating more
17 than $15,000 per annum; and that the revenues of said railway company, so reduced and diminished, would not only be inadequate to provide for the payment of any interest upon the second-mortgage income bond secured by said second mortgage to your orator, as trustee, but would be insufficient and inadequate to provide for the fixed prior obligations of the defendant railway company recited and set forth in the fourth paragraph hereof, or to pay the operating expenses thereof and the expense of maintaining the

property in proper order and good working condition, so that the traffic and business of the road and of every part thereof shall at all times be done with safety and expedition.

That the railroad and property of the defendant railway company, upon which your orator has the lien and in which it has the property, rights and interests hereinbefore referred to, have no other or different value or use than as railway property, and as the same are operated in the carriage of persons and commodities for hire; and that the value of your orator's lien thereon and its property, rights and interests therein is determined and fixedby the productiveness and earning capacity thereof. Your orator avers that if the said rates and charges so promulgated and sought to be enforced by said commission shall be adopted and continued in force by the said defendant railway company, or shall be enforced by any or either of the other defendants hereto, and if the same shall become and remain operative, the result will be a serious and irreparable reduction of the value of the railway and property of the said defendant company, thereby eliminating and destroying the value of your orator's present and future interest therein, and in effect annulling the investment under said second-mortgage income bond; and your orator fears, apprehends and alleges that the value of said property having been thus conclusively fixed and established, and the possibility of any adequate or fair productiveness in the future having been thus concluded, the said railway company will be unable to earn or provide for the interest upon its said prior obligations, and the liens for the security thereof will be enforced by foreclosure; and that upon such foreclosure the said railway and property would not bring,

18 and, by reason of its arbitrarily diminished earning capacity, would not be worth a sum equal to the charges thereon prior to the mortgage indebtedness represented by your orator as trustee. And so your orator shows that the effect and operation of the said railroad commission act, and of the said action of said commissioners in alleged pursuance thereof, threaten to deprive your orator and the beneficiaries of its trust of its and their property, rights and interest; and your orator further avers that it and they would be so deprived of said property, rights and interests without due process of law and in violation of the Constitution and laws of the United States and of the constitution and laws of the State of Texas, as hereinafter more fully alleged and shown.

Your orator further avers, upon information and belief, that the prior mortgage indebtedness hereinbefore recited in paragraph 4 hereof, and the indebtedness to the holders of the bonds secured by the said mortgage to your orator and the stock capitalization of the defendant railway company, represent the actual cost to the said railway company of the construction, acquirement and equipment of its lines of railway and property and the reasonable value thereof, and the capitalization upon which it is entitled to earn, and should pay, full and fair returns by way of interest and dividends. That such returns should be not less than a sum sufficient to provide for the entire interest on its bonded debt, and said railroad commission may not reasonably or lawfully

establish rates and charges which will restrict the earnings of said company so that it will be unable to meet these requirements.

Eighth. Your orator avers that each and all of the rates, charges and classifications prescribed by said defendant railway company in force at the time when said commission act was adopted by the legislature of Texas, and when the several tariffs and orders of the commission were promulgated, as hereinbefore stated, were in no case unreasonably high; that the same were not in restraint of a free movement of all commodities affected thereby; that the same were far less than the rates and charges for like transportation of like articles prior to the construction of the lines of railway of the defendant company, and that the same were not and are not sufficient to enable the said defendant company to pay the interest upon its bonds. Wherefore your orator avers that a reduction of said rates, and the establishment of any reduced rates, are and would be unjust and unreasonable, and in effect a confiscation and appropriation to the use of others' of a portion of the capital invested by the beneficiaries of your orator's trust, and by other persons, in the railroad and securities of the defendant company, and a taking of the property of said company, and of your orator, and of the beneficiaries of its trust, without due process of law, and not in due course of law, and without adequate compensation being made, contrary to, and in violation of section 1 of article 14 of the amendments to the Constitution of the United States, and sections 17 and 19 of article 1 of the constitution of the State of Texas of the year 1876.

19

Your orator further avers that its rates, charges and classifications were fixed and established by the defendant company with a careful regard for the financial, commercial and competitive conditions and laws which enter into, affect or control the making and relative adjustment of rates and classifications in the State of Texas, and yet that since the month of June, 1891 (at which time the receivership hereinafter mentioned was discharged and said railway and property were delivered to defendant company), the earnings from said railway and property have, as your orator is informed and believes, only been as stated in the account included in the following paragraph hereof.

Ninth. Your orator avers that the lines of railway and property of the defendant company were, prior to the month of June, 1891, operated, together with the line of railway and property now belonging to the Tyler Southeastern Railway Company, by S. W. Fordyce and A. H. Swanson, receivers, appointed by the circuit court of the United States for the eastern district of Texas, in a certain consolidated cause then pending in said court, wherein The Central Trust Company of New York, and The Mercantile Trust Company, both corporations of the State of New York, were plaintiffs, and The St. Louis, Arkansas & Texas Railway Company in Texas, and The Kansas & Gulf Short Line Railroad Company were defendants; that the lines of railway, property, franchises and chartered rights now belonging to the defendant company were sold under a decree of foreclosure in said last-mentioned cause, and

20

were purchased at said sale by Louis Fitzgerald, purchasing trustee, and were conveyed to him by deed, dated January 9, 1891; and the said railway property, franchises and chartered rights were by said Fitzgerald, purchasing trustee, conveyed and assigned to the defendant company by deed dated January 13, 1891, upon the considerations stated in the second mortgage of the said defendant railway company, copy whereof is attached hereto, and marked Exhibit "A," as aforesaid, and said receivership was discharged in said month of June, 1891, and said railway and property were then delivered to said railway company, and have since been operated by it.

Your orator further avers that the following is a condensed statement of the income account of the defendant railway company, covering the earnings and expenses of its said railway and property from June 1 to September 30, 1891:

Exhibit of Income Account, June 1 to September 30, 1891.

Debits.

Operating expenses	$64,670 92
Taxes accrued	1,400 00
Interest on first-mortgage bonds at 4 per cent	8,800 00
Interest and exchange	56 99
Total debits	$74,927 91

Credits.

Gross earnings:

Freight	$25,945 60
Passenger	14,619 42
Mail	1,817 70
Express	981 48
Telegraph	227 74
Miscellaneous	342 53
Total earnings and credits	$43,934 47
Deficit	$30,993 44

21 Your orator avers that the average annual revenue per ton per mile derived from the operation of the railway and property now belonging to the defendant company has, with slight interruption, steadily decreased during the entire period since the construction of the said railway; and your orator avers that any further reduction in the rates for transportation, or in the revenues of said company, or any tariffs or orders of the said railroad commission fixing or establishing the rates in force prior to the organization of said commission, or any lower rates, in such a way that the same may not be advanced by the defendant company as opportunity may be afforded by commercial and competitive conditions and laws, are, and would be, unjust, unfair and unreason-

able, and would have the effect of impairing and destroying the property, rights and interest of the said railway company, and of your orator and the beneficiaries of its said trust, to the extent and in the manner hereinbefore and hereinafter stated.

Your orator avers that there will be no compensatory increase in the business and tonnage of the said defendant railway company resulting from the reduced rates established by said commission or otherwise; and that, as your orator is informed and believes, there will be no appreciable or substantial increase whatever in such business or tonnage.

Tenth. Your orator further alleges that the injurious and destructive effect of the establishment of said unjust and unreasonably low rates, would not be limited to the business of the defendant railway company transacted within the limits of the State of Texas; but said rates would affect the interstate business of the railway company and impair and diminish the revenues derived therefrom. In this behalf your orator avers that all interstate rates, in which the defendant railway company and other railway companies of Texas participate, are based upon the rates prevailing between Galveston and interior points in the State of Texas. That the interstate rates are controlled and determined by water competition; that is, the water rates between foreign or Atlantic seaboard points and Galveston, added to the local rate be-
22 tween Galveston and interior Texas points of origin or destination of shipment, make the rate which the interstate lines are compelled to meet or adopt. So that your orator shows that a corresponding decrease of interstate rates would ensue the reductions of intrastate rates required by the schedules heretofore announced by the commission. These conditions affect substantially all classes of shipments which are handled by the defendant railway company, and your orator is informed and believes, and therefore avers, that serious and irreparable loss of revenues from the interstate business of defendant railway company would be caused by the adoption and enforcement of said schedules.

Eleventh. Your orator further avers that by an order, rule, rate and regulation made and established by said commission on the 6th day of November, 1891, and promulgated, published and designated by it as circular No. 34, a copy whereof is filed herewith as part hereof, included in said Exhibit "C" to this bill, said commission requires and commands, and unless restrained by this court will compel, the defendant railway company, upon the demand of the owner of any freight or property contained in any car owned by said railway company, or in its possession, to surrender and deliver its said car containing said freight or property to any railway company designated by said owner with which the railway of defendant company connects, to be used by such other railway company upon its own lines and its connections in the transportation of said property to any place off the line of defendant company's railway designated by the owner of said freight. That under the terms of said order, rule and rate, the cars of the defendant company may be taken from its possession and used as above stated

without the consent of the defendant railway company, and without adequate compensation, and without other compensation for the use thereof by such shipper or other railway company while off said defendant company's line and out of its possession than a rental fixed by the said commission during the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

23 That by said order, rate, rule and regulation, said commission also requires and commands, and, unless restrained by this court, will compel the defendant railway company, under pain of the penalties by said act prescribed, upon the tender of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation, to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over the railway of defendant company, as aforesaid, although said defendant company owns and possesses a large number of cars for the transportation of property received by it as a common carrier, and has, except during rare seasons of extraordinary business activity, a sufficient number of idle cars available for such use. After such car has been transported to the point designated by the owner of the freight contained therein, the defendant company is by said order, rate and rule, required to again haul said car over its railway and redeliver it to the company from which it was received without any compensation whatever for such carriage and service.

That said order, rate and rule also requires said railway company to perform any necessary switching service in receiving from or delivering to any connecting railway line any such car without compensation or reward.

That in the respect above recited, the defendant railway company is, and would be by said order, rate and rule, deprived of its property without due process of law, and not in due course of law, contrary to section 1 of article 14 of the amendments of the Constitution of the United States, and of sections 17 and 19 of article 1 of the constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said order, rate and regula-

24 tion, is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to

its actual and final destination; the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect, your orator shows that said order, rate and rule, so announced and published as said circular No. 34, and said act of the legislature of the State of Texas purporting to confer upon said railroad commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void because in conflict with and in violation of section 8 of article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the amendments thereto.

Twelfth. Your orator further shows that in section 5 of said act of the legislature of Texas, establishing the said railroad commission, it is provided that in actions between private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 of said act. So that your orator alleges that unless the relief herein sought be granted, the failure of the defendant railway company to adopt and put into effect and use the unreasonably low and uncompensatory
25 rates heretofore prescribed by said commission would subject it to a multiplicity of suits brought by shippers for the penalties provided in section 17 of said act; and that in such action the said railway company would be deprived of the lawful defense that the rates and charges so prescribed by said commission were and are unreasonable; and the said railway company, so concluded and deprived of lawful defense, would be subjected to innumerable penalties, ranging from $125 to $500, in each case, and would be thereby deprived of its property without due process of law, and in a proceeding wherein its liability was fixed in advance, contrary to the Constitution and laws of the United States and to the constitution and laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers the said railway company would be deprived of the right to a trial by jury of the issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to section 15, article 1 of the constitution of the State of Texas.

Your orator avers that section 6 of said act provides, that any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis county, Texas, against

said commission as defendant; and section 7 provides, that in all trials under section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including the railway company defendant herein, the right to make the defense that any charges, regu-
26 lations or classifications of the commission are unreasonable, and (with said exception) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and laws of the United States and especially section 1 of article 14 of the amendments to said Constitution, and to the constitution and laws of the State of Texas, and especially to sections 3 and 19 of article 1 of said constitution of Texas.

Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis county has found that such rate or charge is not reasonable, fair or just, and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair, or unjust may only thereafter be made in suits instituted by individual shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of railway companies to make a lawful defense, pending the institution by said railway companies, in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by section 7 of said act. In the meantime innumerable judgments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstand-
27 ing the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act of contesting in a court of competent jurisdiction of Travis county, the reasonableness, fairness or justness of any rate, charge, or act of the said commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to the operation of said act; for, as your orator is further advised and alleges, under the constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your orator further alleges that the constitution of the State of Texas (article V) prescribes a complete judicial system for said State, and the legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the constitution of the State of Texas, or any body, or tribunal constituted by legislative act, with any judicial powers or jurisdiction whatever. And your orator avers that under the limitations of jurisdiction prescribed by the said constitution of the State of Texas, the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in section 6 of said act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them, or either of them, by said sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending
28 the litigation, the tariffs of said commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time the defendant railway company and your orator, and the beneficiaries of its said trust, subject to said act, would suffer great and irreparable loss and injury under the enforcement of said tariffs, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said commission, or any of them, are unjust and unreasonable.

Thirteenth. Your orator further avers that the penalties denounced by said act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced; and

that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to the defendant railway company, and to other railway companies, subject to the operation of said act, to the end that they may be thereby compelled and coerced into the adoption of the rates and charges prescribed by said commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto; and the operation of said act in this respect is harsh, unreasonable and confiscatory; and your orator avers that said act, constituting said railroad commission, is, in this respect, contrary to and in violation of the constitution of the State of Texas.

29 Fourteenth. Your orator avers that unless immediate relief is granted, the tariffs of said commission will cause a serious and very large reduction in the earnings and revenue of said railway company, which will be irretrievably lost to it, and that such loss will be daily sustained until such relief is granted.

In conclusion, your orator alleges that it has requested the defendant railway company to refuse to recognize, adopt or enforce the unfair and unreasonable rates prescribed in said schedules; but said railway company has declined to so refuse, and has adopted said rates, so far as the same have been declared effective by said commission, and intends and proposes to adopt any rates already announced, but not yet effective, under the terms of said schedules, and to put the same in force and effect, upon the ground that under said act of April 3, 1891, it would otherwise be defenseless against the multiplied penalties recoverable at the suits of individual shippers and the additional penalties recoverable in actions instituted by the defendant Culberson; said company fearing that the consequences of such refusal might thus be even more disastrous and ruinous than the operation and effect of said unreasonable rates.

Your orator avers that it was and is duly authorized and empowered by law and its charter to accept and administer its trust herein stated, as trustee of the second mortgage of the defendant railway company, and to take the action and sue for the relief herein stated and sought.

Your orator shows that this cause is a suit in equity, of a civil nature, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and that this cause is a suit arising under the Constitution and laws of the United States, to wit: Under section 10 of article 2 of the Constitution, and under section 1 of article 14 of the amendment to the Constitution, and that in this cause and suit there is a

30 controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and cost, the sum or value aforesaid.

In consideration whereof and forasmuch as your orator is remediless in the premises under the rules of common law, and can have

adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendants hereinafter named may answer the several matters and things hereinbefore set forth, as fully and particularly as if the same were herein again repeated, and they were thereto interrogated, and that an injunction may issue out of this court restraining and enjoining the said The Tyler Southeastern Railway Company, from putting or continuing in effect the tariffs, circulars or orders of the said commission, or either or any of them herein described, and from charging or continuing to charge the rates specified in said tariffs, circulars, or orders or either or any of them; and restraining the said Reagan, McLean and Foster, and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against the said railway company for the recovery of any penalties under and by virtue of any of the provisions of the said commission law; and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs, or either of them or both combined, or under and by virtue of the said tariffs or orders of the said commission, or either of them, from claiming or instituting suit or suits against the said railway company for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said commission law or any of its provisions or under and by virtue of the said tariffs, orders or circulars of the said commission, or any or either of them, or under and by virtue of the said commission law and the said tariffs, orders or circulars, or any or either of them combined, and restraining the said commissioners, and each of them, from making, issuing or delivering to the said railway company, or causing to be delivered
31 to it, any further tariff or tariffs, circulars or orders; and that in the meantime, until the hearing hereof, your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars and orders heretofore made and issued by said commission, and each of them, may be cancelled and declared to be null, void and of no effect by decree of this court, and that a mandatory injunction may be issued to the said commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them, and that your orator may have such further and other relief as this case may require, as well as all costs. May it please your honors to grant unto your orator a writ or writs of subpœna, to be issued out of and under the seal of this honorable court and directed to the said defendants, The Tyler Southeastern Railway Company, John H. Reagan, L. L. Foster and William P. McLean, and Charles A. Culberson, commanding said defendants, and each of them, to appear in this court at some certain day to be therein named, and to answer the premises, but not under

oath (answer under oath being expressly waived), and to abide by and perform such decree as may be rendered herein.

[L. S.] THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, *President.*
FARRAR, JONAS & KRUTTSCHNITT,
ALEXANDER & GREEN, &
WEST & McGOWN, *Complainant's Solicitors.*
JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

32 STATE, CITY AND COUNTY OF NEW YORK, *ss.*:

Louis Fitzgerald, being duly sworn, says that he is the president of The Mercantile Trust Company, the plaintiff above named, and has been such president for a number of years past; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

LOUIS FITZGERALD.

Sworn to and subscribed before me this 5th day of April, 1892.
WM. J. HARDING,
[L. S.] *Notary Public, Kings and New York Counties.*

33 "A."

THE MERCANTILE TRUST CO., Trustee,
vs.
THE TYLER SOUTHEASTERN R'Y CO. OF TEXAS, J. H. REAGAN, *et als.* } No. 189. Equity.

Tyler Southeastern Railway Company to the Mercantile Trust Company. Second Mortgage, Securing Four Per Cent. Second-mortgage Gold Income Bond.

Principal, $330,000.

Due November 1st, 1989.

Interest payable January 1st and July 1st.

Filed Ap'l 30, '92.

R. G. DUVAL, *Clerk,*
By D. H. HART, *Dy.*

34 An indenture, made this 13th day of January, in the year one thousand eight hundred and ninety-one, between the Tyler Southeastern Railway Company, a corporation organized under the

laws of the State of Texas (hereinafter called the "railway company"), party of the first part, and the Mercantile Trust Company, a corporation organized under the laws of the State of New York, as trustee (hereinafter called the "trust company"), party of the second part.

Whereas, the railroad and property, road-bed, track, franchises and chartered rights of the Kansas and Gulf Short Line Railroad Company, a corporation organized under the laws of the State of Texas, were sold to Louis Fitzgerald, purchasing trustee, by virtue of decrees and orders of sale of the circuit court of the United States for the northern district of Texas at Waco, and of the circuit court of the United States for the eastern district of Texas at Tyler, in a certain consolidated cause pending in said court, wherein The Central Trust Company of New York and The Mercantile Trust Company, both corporations of the State of New York, were plaintiffs, and The St. Louis, Arkansas & Texas Railway Company in Texas, and said The Kansas and Gulf Short Line Railroad Company were defendants;

And whereas, the said sale having been duly confirmed, said railroad and property, road-bed, track, franchises and chartered rights were, by order of said courts, conveyed to said Louis Fitzgerald, purchasing trustee, by deed dated January 9th, 1891, which deed is to be forthwith recorded;

And whereas, said purchaser at the said sale of said rail-
35 road and property, road-bed, track, franchises and chartered rights, in pursuance of the laws of the State of Texas in that behalf, did, together with his associates, form a corporation under chapter one of title eighty-four of the Revised Civil Statutes of the State of Texas, for the purpose of acquiring, owning, maintaining and operating the road so purchased as if such road were the road intended to be constructed by such corporation, which corporation so formed was named "Tyler Southeastern Railway Company," and is the party of the first part to this indenture;

And whereas, said purchaser did convey and assign said railroad and property, road-bed, track, franchises and chartered rights to the railway company so formed, by deed dated January 13th, A. D. 1891, which deed is to be forthwith recorded, upon condition that its railway company should, in part payment of the purchase-price thereof, simultaneously with the execution of such deed make, execute and deliver its four per cent. first-mortgage gold bond for the payment on the first day of November, 1989, of the principal sum of six hundred and sixty thousand dollars ($660,000) in gold coin of the United States of the present standard of weight and fineness, at the office of the Central Trust Company of New York, together with interest on said principal sum from the first day of November, 1890, at the rate of four per cent. per annum, payable semi-annually at said office in like gold coin on the first days of May and November—said bond to be secured by a first mortgage upon said premises conveyed and assigned; and that the railway company should further, in part payment of said purchase-price, simul-

taneously with the execution of said deed, make, execute
36 and deliver its four per cent. second-mortgage gold income bond for the payment, on the first day of November, 1989, of the principal sum of three hundred and thirty thousand dollars ($330,000) in gold coin of the United States of the present standard of weight and fineness, at the office of said The Mercantile Trust Company, together with interest from the first day of January, 1890, at a rate not exceeding four per cent. per annum, payable semi-annually at said office in like gold coin, on the first day of January and the first day of July, if and when such interest shall become payable in accordance with the provisions of said bond and of this second mortgage upon said premises, to be executed by the railway company to secure said bond;

And whereas, said railroad and property, road-bed, track, franchises and chartered rights were charged with the payment of said bonds of the railway company as aforesaid, in and by said deed executed by said purchaser, which deed was unanimously accepted and approved by all the stockholders and directors of the railway company and executed by the railway company in evidence of its acceptance of the terms thereof;

And whereas, the railway company has executed and delivered its said four per cent. first-mortgage gold bond, and has executed and delivered to the Central Trust Company of New York a first mortgage upon its railway and property, road-bed, track, franchises and chartered rights to secure the same as aforesaid;

And whereas, said four per cent. second-mortgage gold income bond is to be executed and delivered by the railway company simultaneously herewith and is to be substantially of the following tenor, viz.:

36½ (*Form of Bond.*)

UNITED STATES OF AMERICA.

Tyler Southeastern Railway Company Four Per Cent. Second-mortgage Gold Income Bond.

Due November 1st, 1989.

Know all men by these presents: That the Tyler Southeastern Railway Company (hereinafter called the "railway company"), for value received, acknowledges itself indebted to the Mercantile Trust Company, or bearer, or, if registered, to the registered holder hereof, in the principal sum of three hundred and thirty thousand dollars ($330,000), which sum the railway company covenants, promises, and agrees to pay or cause to be paid unto the bearer, or, if registered, to the registered holder, on the first day of November, in the year one thousand nine hundred and eighty-nine, in gold coin of the United States of America of the present standard of weight and fineness, at the office of said trust company in the city of New York, and that it shall and will also well and truly pay or cause to be paid at the office of said trust company in the city of New York, interest on said principal sum from the first day of January, 1891, at

such rate, not exceeding four per cent. per annum, payable in like gold coin as the net earnings of the railways, property and business of the railway company shall suffice to pay, the same to be determined, ascertained and paid in the manner hereinafter set forth, that is to say:

37 The board of directors of the railway company shall, on the first day of October in each year, or as soon thereafter as conveniently may be, ascertain the net earnings of the railways, property and business of the railway company for the period of six months ending on the next preceding 30th day of June, and the rate of interest on this bond which the said net earnings shall suffice to pay, and the said board shall then and there proceed to declare to be due and payable on the next succeeding first day of January, such interest upon this bond, not exceeding two per cent. for said six months, as said net earnings shall suffice to pay.

The board of directors of the railway company shall, in like manner, on the first day of April in each year, or as soon thereafter as conveniently may be, ascertain the net earnings of the railways, property and business of the railway company for the fiscal year of twelve months ending on the next preceding 31st day of December, and the rate of interest on this bond which said net earnings shall suffice to pay for said fiscal year, and the said board shall then and there proceed to declare to be due and payable on the next succeeding first day of July such rate of interest on this bond as said net earnings for said fiscal year shall suffice to pay, not exceeding, however, such rate as will, when added to the rate declared payable on the next preceding first day of January, out of the net earnings of the first six months of said fiscal year, make the total aggregate rate paid out of the net earnings of said fiscal year equal four per cent. for the entire year.

The board of directors of the railway company shall, from time to time, and within ten days after the rate of interest shall have

38 been so ascertained and declared to be due and payable, give notice thereof in writing to the trust company; and the said rate of interest so to be ascertained and declared shall become absolutely due and payable on the first day of January or July, as the case may be, next succeeding the ascertainment thereof.

The board of directors of the railway company shall in like manner ascertain and declare payable, and the railway company shall thereupon pay, on the first day of November, 1989 (the same being the date of maturity of the principal of this bond), the interest for the four months ending on said first day of November, 1989, at such rate not exceeding one and one-third per cent. for said four months, as the net earnings of the six months ending on the thirtieth day of June, 1989, shall suffice to pay.

The interest on this bond shall not be cumulative in any manner or under any circumstances; and no interest shall be payable in any year except only out of net earnings actually earned during the preceding fiscal year.

It is expressly understood and agreed between the parties hereto that the words "net earnings" herein contained shall be held and

taken to signify and describe the amount or sum remaining of the gross earnings and income of the railway company from all sources during the said periods respectively, after deducting therefrom all operating expenses and all expenses for repairs, renewals and replacements, and all taxes and assessments levied or imposed upon or against the said property and business, or the incomes and earnings thereof, and all indebtedness arising from the said maintenance, operation, renewals or repairs or replacements, and all sums paid or payable by the railway company for interest upon its four per cent. first-mortgage gold bond in the principal sum of
39 $650,000, or under the provisions of a certain indenture of mortgage or deed of trust dated January 13th, 1891, and executed to the Central Trust Company of New York, as trustee, to secure said four per cent. first-mortgage gold bond, and also all payments under car trusts or other charges prior to the mortgage securing this bond—But not including in the said deductions any sums or amounts which may be paid or payable for the building of new extensions or branches or as dividends upon any stock of the company, whether preferred or common, now or hereafter created or issued.

Both the principal and interest of this bond are payable without deduction for any United States, State or municipal tax or taxes which said railway company may be required to pay or retain therefrom by any present or future laws, the said railway company hereby agreeing to pay such tax or taxes.

This bond is secured by and subject to the provisions of a second mortgage or deed of trust, bearing even date herewith, executed by the railway company to the Mercantile Trust Company, as trustee, covering all the railways, property and franchises of the railway company, as provided in said mortgage or deed of trust, to which reference is hereby made with like effect as if fully incorporated herein.

This bond shall pass by delivery unless registered in the owner's name upon the books of the railway company, such registration being endorsed upon this bond, after which no transfer shall be valid unless by endorsement upon this bond and notice thereof to the railway company for registration. After registration the principal and interest of this bond shall be payable only to the registered holder or his assigns so endorsed hereon.

40 This bond shall not become valid until authenticated by the certificate endorsed hereon of the trustee under said mortgage or deed of trust.

In witness whereof said Tyler Southeastern Railway Company has caused these presents to be signed by its president, and its corporate seal to be hereunto affixed and attested by its secretary, this 13th day of January, in the year one thousand eight hundred and ninety-one.

TYLER SOUTHEASTERN RAILWAY COMPANY.

By —— ——, *President.*

Attest: —— ——, *Secretary.*

And whereas the trust company shall endorse upon said second-mortgage gold income bond of the railway company a certificate substantially of the following tenor, namely:

(Form of Trustee's Certificate.)

It is hereby certified that this is the four per cent. second-mortgage gold income bond described in the within-mentioned mortgage or deed of trust executed by the Tyler Southeastern Railway Company to the undersigned.

THE MERCANTILE TRUST COMPANY, *Trustee*,
By —— ——, *President*.

And whereas, the said second-mortgage gold income bond and this indenture were submitted to the stockholders and the
41 directors of the railway company at meetings duly held, and the same were then and there unanimously authorized and approved by all the stockholders and directors of the railway company, and the president and the secretary of the railway company were authorized and directed to execute the same for and on behalf of the railway company and in its corporate name, and to affix thereunto the corporate seal of the railway company, and to deliver said bond and this indenture so executed for and on behalf of the railway company.

Now, therefore, this indenture witnesseth: That in order to secure the payment of the principal and interest of said bond, hereinbefore particularly described, of the railway company; the party of the first part hereto, and the performance of and compliance with the conditions and covenants hereinafter contained, and for and in consideration of the premises, and of the sum of one dollar to it duly paid by the trust company, at or before the ensealing of these presents, and other valuable considerations, the receipt whereof is hereby acknowledged, the railway company has granted, bargained, sold, conveyed and assigned, transferred and set over, and by these presents does grant, bargain, sell, convey and assign, transfer and set over, unto the Mercantile Trust Company, the party of the second part, as trustee, and to its successors and its and their assigns, all and singular its railways, property and franchises, the same being more particularly described as follows:

Its line of railway beginning in the city of Tyler, Smith county, Texas, and running thence in a southerly and southeastwardly direction through the counties of Smith, Cherokee and Angelina to Lufkin in said last-named county, a distance of about 90 miles.

42 Also, all its lands and rights of way, depots and depot grounds, shops and shop grounds and yards, its leases, leased and hired lands, and all rails, railways, sidings, switches, bridges, fences, turn-tables, water tanks, and all other buildings, structures or fixtures whatsoever, acquired or to be acquired, for the use and operation of said railways and property;

Also, all the rolling stock and equipment, machinery tools and implements, fuel and materials, and all other property of every character or description, real, personal or mixed, and wheresoever situate, belonging to the railway company, or hereafter acquired by it, for the use or operation of said railways;

And also all rights, privileges and franchises of the railway company, now possessed or hereafter acquired, belonging or pertaining to the said railways, and the construction, maintenance, use and operation of the same.

Together with all the rights, liberties, easements, hereditaments and appurtenances unto any of the hereby granted and mentioned premises belonging or appertaining, and the reversions and remainders, rents, tolls, earnings, income, issues and profits of the said premises, or any part or parcel thereof, and all the estate, right, title, interest, property, claim and demand of every nature of the railway company, now owned or that may hereafter be acquired, as well at law as in equity, of, in or to the same, or any part thereof.

Subject, nevertheless, to a certain first mortgage or deed of trust bearing date the 13th day of January, 1891, made by the railway company to the Central Trust Company of New York, conveying the said premises to secure the payment of a certain four per
43 cent. first-mortgage gold bond, executed by the railway company for the payment of the principal sum of $60,000, together with the interest thereon, as in said mortgage or deed of trust set forth.

To have and to hold the said railways, property, premises, things, rights, privileges, immunities and franchises hereby conveyed or assigned, or intended so to be, unto the said trust company and its successors, and its and their assigns, subject, however, to said first mortgage or deed of trust, in trust, to secure the payment of the said bond and of the interest to become due thereon according to the tenor of said bond and this indenture, and for the other uses and purposes herein expressed, and upon the terms and conditions, and subject to the covenants and agreements contained in this indenture.

And it is hereby expressly covenanted and agreed, by and between the parties hereto, the railway company covenanting for itself and its successors and assigns, with the trust company and its successor or successors, and its and their assigns, in the trust hereby created, that the further trusts, uses and conditions, and the covenants upon which the said premises, hereby mortgaged and conveyed, are to be held by the trust company, and the covenants of the railway company with the said trust company, in respect to said premises, are as follows, that is to say:

Article I. Until default shall be made in the payment of the principal or interest of said bond of the railway company, or of any part of such principal or interest, according to the tenor of said bond and of these presents, or in the performance or observance by the railway company of any condition, covenant, agreement or requirement of the said bond or of this indenture, to be per-

formed or observed by the railway company, the trust company shall permit and suffer the railway company, its successors or assigns, to possess, manage, operate and enjoy the premises hereby conveyed or assigned, or intended so to be in any manner not inconsistent with these presents, and to receive, take and use the rents, tolls, earnings, income issues and profits thereof.

Article II. If at any time any portion of the lands, tenements or hereditaments hereby mortgaged and conveyed (not part of the railway tracks), cannot be advantageously used in connection with the use or operation of said railways by reason of any change of location, change of track, or by reason of any other cause, the same may be exchanged for other lands, tenements or hereditaments of equal value, or be sold, conveyed, or otherwise disposed of and the trust company shall, if so requested, convey the same by release or otherwise; provided that any lands, tenements or hereditaments acquired by exchange shall be conveyed to the trust company for the further security of said bond of the railway company, subject, however, to said first mortgage of the railway company; and that the proceeds of any lands, tenements or hereditaments so sold, conveyed or otherwise disposed of, or a sum equal thereto, shall be used and applied by the railway company in the purchase of other lands, tenements or hereditaments which shall be conveyed to the trust company, subject to said first mortgage of the railway company, to be held by the trust company hereunder as a part of the mortgaged premises, for the further security of said bond of the railway company.

The trust company and its successors, and its and their as-
45 signs, shall also have full power to allow the railway company, its successors or assigns, from time to time, to dispose of such portion of the equipment, rolling stock, machinery and implements at any time held or acquired for the use of the said railways as may have become unfit for such use, replacing the same by new to the value of that sold; which shall immediately become subject to this mortgage, and shall be expressly assigned, subject to said first mortgage, to the trust company, and its successor or successors in the trust under this mortgage, on its or their demand. The trust company may, in like manner, consent to any changes in the location of the track, or alteration or changes of station-houses, depots, shops or other fixtures which, in the judgement of the company, shall have become expedient; and execute the instruments necessary to enable the railway company to carry the same into effect; but any tracks, premises or property acquired in substitution for any released, changed or altered, shall immediately become subject to this mortgage and be conveyed to the trust company (subject, however, to said first mortgage), to be held as part of the premises hereby mortgaged.

The sworn statement of the president or vice-president and the chief engineer for the time being of the railway company may be received by the trust company as sufficient evidence of any of the facts mentioned in this article, and shall be full protection to the trust company for any action taken by it on the faith thereof, but

the trust company may, in its discretion, require such further and additional evidence as to it may seem reasonable.

Article III. Upon delivery to the trust company of said second-mortgage gold income bond of the railway company, the
46 trust company shall authenticate the same by signing the certificate endorsed thereon, and shall deliver the same so certified to said Louis Fitzgerald, purchasing trustee.

The railway company covenants and promises with and to the trust company that it shall and will promptly pay the interest and principal of the said bond hereinbefore described, as and when the same shall become due and payable, according to the tenor and effect of said bond, and without deduction from either principal or interest thereof for any United States, State or municipal tax or taxes which, under any present or future law, may be required to be paid or deducted therefrom, the railway company hereby agreeing to pay such tax or taxes.

Article IV. In case the mortgaged premises shall be sold under the power of sale contained in said first mortgage or deed of trust executed by the railway company to secure its said first-mortgage bond, or in case said mortgaged premises shall be sold in pursuance of judicial proceedings for the foreclosure of said first mortgage or deed of trust, then in any and every such case the principal of said hereinbefore-described second-mortgage gold income bond of the railway company shall thereupon become and be immediately due and payable simultaneously with such sale.

Article V. In case any default shall be made in the payment of the principal and interest of said bond of the railway company, or of any part of such principal or interest, as and when the same shall become due or payable according to the tenor of said bond and of these presents, then and in any and every such case, the railway company, its successors and assigns, shall, upon demand of the trust company, forthwith surrender to the trust com-
47 pany to actual possession of, and the Trust Company personally, or by its agents or attorneys, shall be entitled forthwith to enter into and upon and take possession of all and singular the said property and premises, with the appurtenances hereby conveyed or mortgaged, or so intended to be, together with all the maps, records, books, papers and accounts of the said railway company; and the trust company having and holding said premises shall be authorized to use, operate and manage said premises, by such agents, servants and attorneys as the said trust company may select, and from time to time, at the expense of the trust estate, to insure or keep insured, the buildings machinery and other insurable property, upon said premises, subject to the lien of these presents, and likewise, from time to time, at the expense of the trust estate, to make all necessary or proper repairs, replacements or renewals or improvements thereto, as may seem to the trust company judicious, and as the net income derived by it from said premises shall suffice to pay for; and to receive and collect the rents, tolls, earnings, income, issues and profits of said premises, and to pay therefrom all the proper costs, charges and expenses of the

trust and of so taking, holding and managing said premises, including a reasonable compensation to the trust company, its agents, attorneys, and counsel, and all taxes and other charges prior to the lien of these presents, and all expenses of such operation, repairs, alterations and improvements; and after deducting all said amounts the trust company shall apply any balances remaining to the payment of any interest on said bond which may have become due and payable according to the tenor and effect of said bond, in the order of the maturity of the instalments of such interest.

48 In case the principal of said bond of the railway company shall have become due, or shall, after such entry, become due, then any such balance in the hands of the trust company which may have accrued and not have been actually paid over, and any such balance thereafter accruing, shall be applied to the payment of the whole amount of the principal and interest due upon said bond, *pro rata*, without any preference or priority whatever as to the principal or interest, and ratably according to the aggregate amount of the principal and accrued interest due and unpaid.

After payment of all amounts due and payable upon said bond, according to the tenor and effect thereof and of these presents, the trust company shall restore possession of the premises to the railway company, its successors or assigns; and if the principal of said bond shall not have become due and have been paid, said premises shall thereupon be held subject to this mortgage or deed of trust as before.

Article VI. In case any default shall be made in the payment of the principal or interest of said bond of the railway company, or of any part of such principal or interest when the same shall become due or payable, according to the tenor and effect of said bond and of these presents, then, and in any and every such case, the trust company shall be entitled, with or without entry, to sell all the premises, estate, property, rights and franchises hereby conveyed by the railway company, or so intended to be, at public auction in the city of Waco, Texas, first giving notice of the time, terms and place of sale and of the property to be sold, by publication in one or more newspapers published in said city of Waco, and one or more

49 newspapers published in the city of New York, State of New York, at least once a week for sixty days next preceding such sale; and from time to time to adjourn such sale in its discretion, and upon such sale to make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds for the same, which sale shall be a perpetual bar in law and in equity against the railway company and all persons and corporations claiming and to claim by, through or under it. Upon the making of any such sale, (or in case of sale of the mortgaged premises, pursuant to judicial proceedings,) the proceeds of such sale shall be applied as follows, to wit:

First, to the payment of the costs and expenses of such sale, including a reasonable compensation to such trust company, its agents, attorneys and counsel, and of all expenses, liabilities and

advances made and incurred by such trust company in managing and maintaining the property hereby conveyed, or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sale shall have been made subject.

Secondly, to the payment of the whole amount of principal and interest which shall then be owing or unpaid upon said bond, whether the said principal, by the tenor of said bond, be then due or yet to become due; and in case of the insufficiency of such proceeds to pay in full the whole amount of such principal and interest due and unpaid upon the said bond, then to the payment of such principal and interest, *pro rata*, without preference or priority, and ratably, to the aggregate amount of such principal and accrued and unpaid interest.

Thirdly, to pay over the surplus, if any, to the railway company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

And it is further declared and agreed that the receipt of the trust company, its successor or successors, who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of such trust company, be obliged to see to the application of such purchase-money upon or for the purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase-money by the trust company.

Article VII. The several remedies in these presents specified are cumulative and not exclusive one of the other. In case of any default in the payment of the principal or interest, or any part of the principal or interest, of said bond of the railway company when the same shall become due or payable according to the tenor and effect of said bond and of these presents, or in case default shall be made in performing or complying with any covenant or condition of this indenture, then, and in any and every such case, the trust company, its successor or successors, and its or their assigns, may proceed to enforce its or their rights hereunder, and the rights of the holder of said bond, by sale or entry, or both, or by action, suit or other judicial proceedings.

Article VIII. Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the trust company under these presents upon any default by the railway company under this mortgage or deed of trust, the trust company shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the property hereby mortgaged, and of the rents, tolls, earnings, income, issues and profits thereof pending such proceedings.

The railway company covenants and agrees that it will not claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now existing or which may hereafter be

passed in the State of Texas, in order to prevent or hinder the enforcement or foreclosure of this mortgage or the absolute sale of the premises hereby granted, free from any right of redemption, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, but the benefit of all such laws is hereby waived.

Article IX. The railway company covenants and agrees that it shall and will pay and discharge, before the same shall fall into arrears, all taxes, water rates and assessments upon said mortgaged premises, and shall and will keep said railways, together with the bridges and structures upon the said mortgaged premises, in good order and repair, and shall not create or suffer to be created any mechanics', laborers' or other lien or charge whatsoever upon the mortgaged premises, or any part thereof, which might or could be prior to the lien of these presents, or do or suffer to be done any matter or thing whereby the lien of these presents might or could be impaired.

Upon default by the said railway company in paying any
52 such taxes, assessments, liens or other charges, the trust company may, if so advised, and without impairment of or prejudice to any of its rights under this mortgage by reason of such default, itself pay such taxes, assessments, or other liens or charges, and have a lien upon the mortgaged premises for its advances for that purpose.

Article X. The railway company, for itself and all persons and corporations hereafter claiming through or under it, or who may at any time hereafter become holders of liens junior to that of these presents, hereby expressly waives and releases all rights to have the estates comprised in the security intended to be created by these presents marshalled upon any foreclosure or other enforcement thereof; and the trust company herein, and any court in which foreclosure of this mortgage or administration of the trusts hereby created is sought, shall have the right to sell the entire railways of every description mortgaged and conveyed by the railway company to the trust company as an entirety.

In case of any sale, whether under the power of sale hereinbefore provided or under the order or decree of a court, the holder of said bond of the railway company, or any person or persons having an interest in said bond, may bid for and purchase said mortgaged premises on equal terms with other persons. The purchaser or purchasers at any such sale, in making settlement for or on payment of the purchase-money bid, shall be entitled, on presenting said bond, to be credited on account thereof with the net proceeds of the sale which would be applicable to the payment of said bond or with the portion thereof to which such purchaser or purchasers may be equitably entitled.

Article XI. The railway company shall and will, at any
53 time, upon the request of the trust company, make, do, execute, acknowledge and deliver all such acts, deeds and assurances in law as may be reasonably advised, devised or required for effectuating the intention of these presents, and for the better assur-

ing and confirming unto the said trust company, and its successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular the premises hereby conveyed or assigned or intended so — be.

Article XII. Upon payment in full of the principal and interest of the hereinbefore-recited bonds of the railway company, when and as the same shall become due and payable, the estate, right, or title of the trust company, under, in or to the railways and premises hereby conveyed and mortgaged by the railway company shall cease and determine, and the trust company shall, if required by the railway company, and at its cost and expense, enter upon the records, satisfaction of the lien created by this mortgage upon said railways and premises.

Article XIII. It is understood and agreed that the trust company shall not be required to take any step in the execution of the trusts hereby created, if in its opinion such action will be likely to involve it in expense or liability, unless the holder of said bond of the railway company, or some person or persons interested in said bond shall, as often as required by the trust company, give it reasonable indemnity against the same, anything herein contained to the contrary notwithstanding, and that the trust company and its agents, attorneys and counsel, shall be entitled to a reasonable compensation for all services rendered in connection with the trust hereby created or in pursuance of the provisions of this indenture. The railway company agrees to pay to the trust company such
54 compensation, and also all expenses reasonably incurred by the trust company hereunder, and the trust company shall have a lien therefor upon the mortgaged property and the proceeds thereof.

The trust company may resign, and thereby become discharged from the trusts hereby created, by notice in writing to be given to said railway company at least two months before such resignation shall take effect; but such resignation shall take effect immediately upon the appointment of a new trustee, if such new trustee hereunder shall be appointed before the time limited by such notice.

It is further understood and agreed, by and between the parties hereto, that the trust company shall not be answerable for any default or miscarriage of any agent or attorney by it appointed hereunder, if such agent was selected with reasonable care, nor for any error or mistake of judgment made by it in good faith, but shall only be liable for gross negligence or willful misconduct in the execution of said trusts.

In case at any time hereafter the said trust company or any trustee hereafter appointed shall resign or become unfit to act, or be removed, its successors shall be appointed by the holder of said bond of the railway company, or by the assigns or nominees of such holder, by an instrument in writing executed by said holder, his assigns or nominees, a copy of which instrument shall be delivered to the railway company.

Any new trustee appointed shall thereupon become vested with all the property, rights, duties and trusts of the trusts company,

with like effect as if named as trustee herein, and the trustee so resigning or removed shall, on the written request from the
55 new trustee who may be appointed, immediately execute an instrument of transfer to vest in such new trustee upon the trusts herein expressed, all the property, privileges and rights hereunder of the trustees so resigning or removed. It is understood and agreed that the words "trust company" or "trustee" as used in this instrument, shall be held and construed to mean the party of the second part, or its successor or successors for the time being in the trust hereby created.

Article XIV. Whereas, in order to expedite the recording of this deed of trust or mortgage three counterparts thereof are simultaneously executed, acknowledged and delivered by the party of the first part to the party of the second part:

Now, therefore, this indenture further witnesseth, that although three counterparts are simultaneously executed, acknowledged and delivered by the party of the first part to the party of the second part, and the said party of the second part, in evidence of its acceptance of the trusts hereby created, has likewise simultaneously executed and acknowledged the same, to the end that all or any one or more thereof may be recorded, that any one or more of said counterparts so executed, acknowledged and delivered shall, severally or collectively, be deemed to be an original and, for all intents and purposes, but one instrument.

56 In witness whereof, the party of the first part and the party of the second part have, respectively, caused these presents to be signed in their corporate names by their presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries, the day and year first above written.

TYLER SOUTHEASTERN RAILWAY COMPANY,
By WILLARD FISHER,
[CORPORATE SEAL.] *President.*

Attest: G. P. DOUGLAS, *Secretary.*

Ssgned, sealed and delivered in the presence of—
VICTOR MORAWETZ.
J. W. PHILLIPS.

THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD,
[CORPORATE SEAL.] *President.*

Attest: H. C. DEMING, *Secretary.*

Signed, sealed and delivered in the presence of—
A. R. HERRIMAN.
W. H. SEWARD, JR.

57–228 THE STATE OF TEXAS, }
County of Smith, } ss:

Before me, the undersigned, Jeff. D. Burns, a notary public of the State of Texas within and for the county aforesaid, on this 13th day of January, in the year one thousand eight hundred and ninety-one, personally came the Tyler Southeastern Railway Company, by Willard Fisher, its president, known to me to be the person whose name is subscribed to the foregoing instrument as president of said Tyler Southeastern Railway Company, and acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 13th day of January, A. D. 1891.

[NOTARIAL SEAL.] JEFF. D. BURNS,
Notary Public, Smith County, Texas.

STATE OF NEW YORK, }
City and County of New York, } ss:

Before me, the undersigned, George H. Taylor, a commissioner of the State of Texas within and for the State and city aforesaid, on this twenty-second day of January, in the year one thousand eight hundred and ninety-one, personally came The Mercantile Trust Company, by Louis Fitzgerald, its president, known to me to be the person whose name is subscribed to the foregoing instrument as president of said The Mercantile Trust Company, and acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this twenty-second day of January, 1891.

[COMMISSIONER'S SEAL.] GEORGE H. TAYLOR,
A Commissioner of Deeds of the State of Texas in the State and City of New York,
29 Nassau Street, New York City.

229 (Original.)

No. 189. Equity.

In the Circuit Court of the United States for the Western District of Texas.

THE MERCANTILE TRUST COMPANY, Complainant,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, and Others, Defendants. } In Equity.

Answer of the Tyler Southeastern Railway Company.

Perkins, Gilbert & Perkins, Greenville, Texas, solicitors for defendant The Tyler Southeastern Railway Company.

Alex. G. Cochran, Winslow S. Pierce, of counsel.

Filed June 15, '92.

B. G. DUVAL, *Clerk,*
By D. H. HART, *Dy.*

230 In the Circuit Court of the United States for the Western District of Texas.

THE MERCANTILE TRUST COMPANY, Complainant,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, William P. McLean, and L. L. Foster, Constituting the Railroad Commission of Texas, and Charles A. Culberson, Defendants.

The Answer of the Defendant The Tyler Southeastern Railway Company to the Bill of Complaint of the Complainant Herein.

The defendant The Tyler Southeastern Railway Company, now and at all times hereafter reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said bill contained, for answer thereto or unto so much or such parts thereof as this defendant is advised it is material for it to make answer unto, answering, says—

That for the purpose of avoiding unnecessary prolixity in this answer this defendant, inasmuch as it cannot deny, hereby admits all the allegations in the said bill of complaint contained, except in so far as the same or parts thereof shall be hereinafter denied, modified, or qualified.

231 This defendant specially admits that it has been requested by the complainant herein to refuse to recognize, adopt, or enforce the rates prescribed in the schedules, circulars, and orders of said railroad commission, and further admits that it has declined to comply with such request, but has, under protest, put in force said rates as far as the same have been declared effective by said commission, and this defendant avers and alleges that although said rates so fixed are unfair, unjust, unreasonable, and confiscatory, and although it denies that the same can be lawfully applied to it, it has declined to so refuse to adopt the same, and has, under protest as aforesaid, put the same into effect, fearing that by reason of the multiplied and excessive fines and penalties denounced by the act of April 3d, 1891, constituting the railroad commission, and by reason of the innumerable suits therein and thereby authorized and provided for and the vast cost and expense attending the defense thereof, the consequences of such refusal might be even more disastrous than the operation and effect of said unreasonable rates, and this defendant, now submitting itself to such orders and decrees as this honorable court may make herein, avers that it is remediless and without protection in this behalf except in this honorable court, and prays that such decrees and orders as this court may make herein shall be made with due regard to its protection in the premises.

And now, having fully answered, this defendant prays to be

232 hence dismissed with its reasonable costs and charges in this behalf sustained.

THE TYLER SOUTHEASTERN RAILWAY COMPANY,
By PERKINS, GILBERT & PERKINS,
Solicitors for said Defendant. [L. S.]

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Guy Phillips, being duly sworn, says that he is the assistant secretary of the defendant The Tyler Southeastern Railway Company named in the foregoing answer; that he has read the answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

GUY PHILLIPS.

Sworn and subscribed to before me this 7th day of June, 1892.

E. A. JACKSON,
[L. S.] *Notary Public, N. Y. Co.*

3345.

233 In the Circuit Court of the United States for the Western District of Texas. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *vs.* THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, and Others.	Original Bill.
THE TYLER SOUTHEASTERN RAILWAY COMPANY, Complainant, *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others.	Cross-bill.

Leave is hereby granted to the Tyler Southeastern Railway Company to file its cross-bill in the above-styled and numbered cause, as prayed for therein.

A. P. McCORMICK,
Circuit Judge.

June 16, 1892.

[Endorsed:] No. 189. Mercantile Trust Co., trustee, *v.* Tyler Southeastern Ry Co., J. H. Reagan, *et al.* Order granting leave to Tyler Southeastern Ry Co. to file cross-bill. Filed June 18th, 1892. B. G. Duval, clerk, by D. H. Hart, d'y.

233½ (Original.)

No. 189. Equity.

In the Circuit Court of the United States for the Western District of Texas. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *against* THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, and Others.	Original Bill.
THE TYLER SOUTHEASTERN RAILWAY COMPANY, Complainant, *against* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others.	Cross-bill.

Cross-bill of the Tyler Southeastern Railway Company.

Perkins, Gilbert & Perkins, Greenville, Texas, solicitors for cross-complainant.

Alex. G. Cochran, Winslow S. Pierce, of counsel.

Filed June 18, 1892.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

234 In the Circuit Court of the United States for the Western District of Texas, Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *against* THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, and Others, Defendants.	Original Bill.
THE TYLER SOUTHEASTERN RAILWAY COMPANY, Complainant, *against* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others, Defendants.	Cross-bill.

Cross-bill of the Tyler Southeastern Railway Company.

To the judges of the circuit court of the United States for the western district of Texas, fifth circuit, sitting in equity:

235 The Tyler Southeastern Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, by leave of court first had and obtained, brings this its cross-bill of complaint against The Mercantile Trust Company, the complainant herein, the "Railroad Commission of Texas," organized under an act of the legislature of the State of Texas, approved April 3d, 1891, and which is a citizen of the State of Texas, and whose office is in the western district of Texas, and

which is a resident and inhabitant of said district; and John H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting said "railroad commission of Texas," and Charles A. Culberson, a citizen and resident of said State of Texas; and thereupon, humbly complaining, your orator shows unto your honors as follows:

First. That on or about the — day of April, 1892, the said Mercantile Trust Company filed and exhibited in this court its bill of complaint against your orator and against said Reagan, McLean and Foster and Charles A. Culberson, as defendants, wherein and whereby the said Mercantile Trust Company, complainant, alleged, in substance:

That the defendants Reagan, McLean and Foster, claiming to act as the railroad commission of Texas, and appointed under and by virtue of an act of the legislature of the State of Texas, approved on the 3d day of April, 1891, had announced and undertaken to establish and make effective as against your orator and other railroad companies operating railroads in the State of Texas, certain rates, tariffs, schedules and classifications for the transportation of commodities therein described over the lines of railway of your orator and of other railroad companies of the State of Texas.

That said complainant is trustee of the second mortgage, executed by your orator to secure its second-mortgage income bonds now outstanding to the amount of $3,330,000, issued for value, and payable to the Mercantile Trust Company or bearer; that said mortgage is subject to prior lien and mortgage covering the
236 property of your orator and securing outstanding indebtedness aggregating $660,000.

That the said rates, tariffs and classifications were not established by said commission fairly, nor in the method prescribed by said act of April 3, 1891, nor upon due notice and hearing, nor in accordance with the evidence showing and information given afforded and available to the commission. That the said rates, charges and classifications were unreasonable, unjust and confiscatory, and would operate, if adopted by your orator, to reduce its earnings in a sum exceeding $15,000 per annum, and to impair and diminish the earning capacity, and, hence, the value of its property pledged to secure said second-mortgage bond, and to destroy the property and interests of said Mercantile Trust Company, as trustee, and of the beneficiaries of its trust, and to take the same without due process of law, and to deny to your orator and to the said Mercantile Trust Company, as trustee, and to the beneficiaries of its trust the equal protection of the laws. That the enforcement of said rates would prevent your orator from earning the interest upon its said second-mortgage bond, or any part of said interest, and that the same would destroy the ability of your orator to earn the interest upon prior obligations or expenses of operation, threaten default and foreclosure of prior liens, and sale of your orator's railroad and property, which would not then bring, and, by reason of its diminished earning capacity, would not be worth, a sum equal to said prior obligations. That the rates, charges, tariffs and rules of the commission are made, by

said act, conclusive in all cases except in a direct proceeding to test the reasonableness thereof to be instituted in a court of competent jurisdiction in Travis county, Texas, and that multiplied and excessive fines and penalties are denounced by said act for any violation of any order of the commission or departure from the rates, charges and tariffs prescribed by the commission. That by reason of the fact that your orator would be, by the operation of said act, remediless and without defense in proceedings against it for
237 such multiplied and excessive fines and penalties, and for alleged damages in case it disregarded the unreasonable rates, tariffs and orders of the commission, your orator had feared to refuse and had declined to refuse to adopt and enforce, and had already adopted and proposed further to adopt and enforce, the said unreasonable, unfair and unjust tariffs, charges and rates, and that defendants Reagan, McLean and Foster, claiming to act as such commission, and defendant Culberson, claiming to act as the attorney general of Texas, claim the right and threaten to exercise the powers purporting to be conferred upon them by said commission act in respect to the enforcement of the rates of the commission and the penalties for departure from said unreasonable and unjust tariffs established by it.

Complainant, in and by said bill of complaint, prayed for a decree cancelling and annulling the tariffs already established by the commission and restraining it from issuing further tariffs, and restraining your orator from adopting or enforcing said tariffs, and enjoining the institution of suits and proceedings against your orator for alleged violation of said tariffs and orders of the commission. Complainant filed with its said bill of complaint, as exhibits thereto, copy of the said second mortgage of your orator to complainant as trustee, copies of the schedules, tariffs and circulars established and published by the commission prior to the filing of the bill, and a copy of said act of the legislature of Texas, approved April 3, 1891. For the full terms, statements, allegations and prayer of said bill, and for the full terms and contents of said exhibits, your orator refers to the said bill and exhibits respectively, with the same effect as if they were herein incorporated and set out.

Your orator files herewith its answer to said original bill of complaint, substantially admitting (as it could not deny) the allegations thereof; and now, to the end that it may represent to the court its own rights and interests, and those of its stockholders, in the premises, and may have the redress and relief to which it and they
238 are entitled, it exhibits (with leave of court, as aforesaid) this its cross-bill of complaint, and further shows to the court as follows:

Second. Your orator avers that in addition to its bonded indebtedness alleged in the complaint, it has lawfully issued for value, and there is now outstanding, its capital stock to the amount of $250,000, out of an authorized capital of $1,000,000. That its said bonds and stock were issued in the manner and for the objects prescribed and authorized by its charter, and the same represents a

part of the cost to your orator of its railroad, property and equipment, and of the renewal, replacement, improvement and betterment thereof, and represents under just and reasonable conditions, the fair value of said property.

That prior to the month of June, 1891, the railroad and property now belonging to your orator was in the possession of receivers appointed by the circuit court of the United States for the northern district of Texas under bills to foreclose the mortgages of the St. Louis, Arkansas and Texas Railroad Company of Texas, and the Kansas and Gulf Short Line Railroad Company, all of which is more fully set forth in the ninth paragraph of the original bill of complaint of the Mercantile Trust Company; that since said month of June, 1891, your orator has been in possession of its railways and property, described in said original bill of complaint and in its said second mortgage, and during the period between said month of June, 1891, and the 31st day of March, 1892 (down to which latter date your orator's accounts have been finally made up), the earnings from the railroad and property of your orator, and its expenses have been as set forth in the following exhibit of its income account:

239 EXHIBIT OF INCOME ACCOUNT, JUNE 1, 1891, TO MARCH 31, 1892.

Debits.

Operating expenses	$151,182 86
Taxes accrued	3,717 86
Interest on first-mortgage bonds at 4 per cent	22,000 00
Interest and exchange	111 30
Sundry amounts	98 53
Total debits	$177,110 55

Credits.

Gross earnings:	
Freight	$70,643 13
Passenger	35,858 18
Mail	4,551 76
Express	2,627 48
Telegraph	549 54
Miscellaneous	1,398 47
Total earnings and credits	$115,628 56
Deficit	$61,481 99

Your orator shows that for the ten months embraced in said income account it not only earned no part of the interest accrued for that period upon its first-mortgage bond, but its earnings fell short in the sum of $39,481.99 to provide for the expense of actual operation.

Your orator further states that the results of its operations for the month of April, 1892, have been carefully estimated, largely upon the basis of actual returns, to have been as follows:

240	Operating expenses	$11,000 00
	Taxes accrued	370 00
	Interest on first-mortgage bonds	2,200 00
	Total debits	$13,570 00
	Deduct gross earnings	7,000 00
	Deficit from operations	$6,570 33

So that your orator avers that the result of its operations for the eleven months ending April 30th, 1892, covering the entire period during which your orator had been in possession of its said railroad and property, shows a deficit in its earnings of $43,851.99 to meet the actual expenses of operation; and your orator avers that such deficit will be further increased as a result of its operations, under the prevailing rates and tariffs, during the month of May, 1892, which month closes the first year of its operations. Your orator states that it has been compelled to borrow large sums of money to provide for the expenses of its operation, its fixed charges and the betterment and improvement of its property, and that it now owes a floating debt over and above its mortgage indebtedness, incurred for these purposes, aggregating a sum in excess of $43,000.

That the stockholders of your orator have never received any dividend or return whatever for or upon their investment or stock. That, notwithstanding the inadequacy of your orator's earnings to provide any return upon the capital invested in or the value of your orator's property, and notwithstanding the rates and charges for transportation in force upon your orator's railway at the time the commission was established, were, as your orator now alleges the fact to be, very low and inadequate; and notwithstanding these conditions were represented to and were known to the commission, and naught to the contrary thereof appeared, said commission, without warrant or justification, proceeded to establish the reduced, unreasonable and unjust tariffs and regulations set forth in
241 Exhibit C to the complaint, and has undertaken to require, and claims the right to require, conformity therewith on the part of your orator. Your orator here adopts and specially avers the statements and allegations contained in the sixth article or paragraph of the original bill of complaint herein, and avers that the same are in all respects true.

Third. Your orator admits and here avers all of the allegations contained in the seventh, eighth, ninth, and tenth paragraphs of the said original bill of complaint of the Mercantile Trust Company, and asks that said allegations shall be deemed and taken to be by it made as if herein incorporated; and avers upon information and belief that the diminution and reduction in its revenues consequent upon the adoption and enforcement of the rates and tariffs

promulgated by the railroad commission, have been and will be as great as alleged in the said bill of complaint.

Your orator avers that its revenues upon substantially all interstate business are absolutely controlled by the rates established by said commission and in force for transportation within the State of Texas and from interior Texas points to Galveston, and such interstate rates therefore are practically established by the said commission to the same extent as if interstate shipments were by law subject to the control of that body. The allegations in this behalf contained in the tenth paragraph of the original bill of complaint herein are here particularly referred to, adopted and reaverred.

Fourth. Your orator here adopts and avers all of the allegations contained in paragraph 11th of the original bill of complaint of the Mercantile Trust Company, and states that the same are true.

Your orator avers that by circular No. 34, established and published by the said railroad commission, included in Exhibit C to the original bill of complaint, the commission undertakes, upon the demand of the owner of any freight or property contained in any car owned by your orator, or in its possession, to require your
242 orator to surrender and deliver said car to other railroad companies whose lines connect with those of your orator, to be used by said other railroad companies upon its own lines and connections in the transportation of the property contained in said car to any place off the line of your orator's railway designated by the owner of said property or freight. That under the terms of said circular the cars of your orator may be taken from its possession and used as above stated, without its consent, without adequate compensation, and without other compensation for use thereof while off your orator's lines and out of its possession than a rental fixed by the commission covering the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

Said circular further requires your orator, upon the tender to it of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation, to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over your orator's railway, although your orator owns and possesses a large number of cars for the transportation of property received by it as a common carrier, and has, except during rare seasons of extraordinary business activity, a sufficient number of idle cars available for such use. And said circular further requires that, after such car has been transported to the point designated by the owner of the freight contained therein, the same shall be returned and rehauled

by your orator over its railway and be redelivered to the company from which it was received without any compensation whatever for such carriage and service.

And said circular further requires your orator to perform
243 without compensation or reward any necessary switching service in receiving from or delivering to any connecting railway line such car.

Your orator submits that in the respects above recited, your orator is, and would be by said order and circular, and by the requirements of the commission therein contained, deprived of its property without due process of law, and not in due course of law, contrary to section 1 of article 14 of the amendments of the Constitution of the United States, and of sections 17 and 19 of article 1 of the constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said circular is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to its actual and final destination,—the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect, your orator shows that said order, rate and rule, so announced and published as said circular No. 34, and said act of the legislature of the State of Texas, purporting to confer upon said railroad commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void, because in conflict with and in violation of section 8 of article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the amendments thereto.

244 Fifth. Your orator here adopts and avers all of the allegations contained in the twelfth paragraph of said original bill of complaint of the Mercantile Trust Company, and shows that in section 5 of said act of the legislature of Texas, establishing the said railroad commission, it is provided that in actions between private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 of said act. So that your orator alleges that, unless the relief herein sought be

granted, its failure to adopt and put into effect and use the unreasonably low and uncompensatory rates heretofore prescribed by said commission would subject it to a multiplicity of suits brought by shippers for the penalties provided in section 17 of said act; and that in such suits it would be deprived of the lawful defense that the rates and charges so prescribed by said commission were and are unreasonable; and, so concluded and deprived of lawful defense, it would be subjected to innumerable penalties, ranging from $125 to $500, in each case, and would be thereby denied the equal protection of the laws and be deprived of its property without due process of law, and in a proceeding wherein its liability was fixed in advance, contrary to the Constitution and laws of the United States and to the constitution and laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers it would be deprived of the right to a trial by jury of the issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to section 15, article 1 of the constitution of the State of Texas.

Your orator avers that section 6 of said act provides, that
245 any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant; and section 7 provides, that in all trials under section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including your orator, the right to make the defense that any charges, regulations or classifications of the commission are unreasonable, and (with said exceptions) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and laws of the United States, and especially section 1 of article 14 of the amendments to said Constitution, and to the constitution and laws of the State of Texas, and especially to sections 3 and 19 of article 1 of said constitution of Texas.

Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis
246 county has found that such rate or charge is not reasonable, fair or just; and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair or unjust, may only thereafter be made in suits instituted by individual shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of railway companies to make a lawful defense, pending the institution by said railway companies in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense, and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by section 7 of said act. In the meantime innumerable judgments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act, of contesting in a court of competent jurisdiction of Travis county the reasonableness, fairness or justness of any rate, charge or act of the said commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to the operation of said act; for, as your orator is further advised and alleges, under the constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your orator further alleges that the constitution of the State of Texas (arti-
247 cle V) prescribes a complete judicial system for said State, and the legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the constitution of the State of Texas, or any body or tribunal constituted by legislative act, with any judicial powers or jurisdiction whatever. And your orator avers that under the limitations of jurisdiction prescribed by the said constitution of the State of Texas the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in section 6 of said act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to deter-

mine or adjudicate any of the matters purporting to be committed to them, or either of them, by said sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time your orator would suffer great and irreparable loss and injury under the enforcement of said tariffs or penalties, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said commission, or any of them, are unjust and unreasonable.

Sixth. Your orator further avers that the penalties de-
248 nounced by said act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced, and that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to it and to other railway companies subject to the operation of said act, to the end that they may be thereby compelled and coerced into the adoption of the rates and charges prescribed by said commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto, and the operation of said act in this respect is harsh, unreasonable and confiscatory, and your orator avers that said act constituting said railroad commission is, in this respect, contrary to and in violation of the constitution of the State of Texas.

Seventh. Your orator shows that under the fear and apprehension of the excessive, immoderate and multiplied fines, penalties and damages denounced and provided for in said act, and by reason of the innumerable suits therein and thereby authorized and provided for, and the vast cost and expense attending the defence thereof, and notwithstanding that it believes and here avers that the tariffs, charges and orders established by said commission are unfair, unjust and unreasonable, and notwithstanding your orator claims that the same cannot be made lawfully applicable to it, it has, under protest, put the same into effect upon its lines of railway.

Eighth. Your orator avers that its mortgage bonds and
249 stock were made and issued by it lawfully and in accordance with the powers and limitations conferred and prescribed by its charter. That it was not and is not competent for the legisla-

ture of the State of Texas, directly or through any instrumentality or agency by it created, to fix and establish such rates or charges for services by it performed as to affect or diminish its earnings and revenues or to affect or impair its present or ultimate ability to earn the interest upon its bonds, and in addition thereto a fair reward for the services by it performed; and therefore your orator avers that said act of April 3, 1891, and said commission's tariffs and regulations are, so far as they purport or are intended to apply to your orator and its business, void and inoperative and violative of the rights and exemptions secured to your orator by its charter.

Except as herein and hereby qualified your orator adopts and avers all the allegations contained in the said original bill of The Mercantile Trust Company, complainant, and asks that this averment be deemed and taken to be equivalent to the incorporation herein of all the said allegations, as so qualified, contained in said bill.

In consideration whereof, and for as much as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly, as if the same were herein again repeated and they were thereto interrogated; and that an injunction may issue out of this court restraining the said Reagan, McLean and Foster and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions,
against your orator for the recovery of any penalties under
250 and by virtue of any of the provisions of the act of the legislature of Texas, approved April 3d, 1891, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs or either of them or both combined, or under and by virtue of the said tariffs or orders of the said commission or either of them, from bringing or instituting suit or suits against your orator for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said commission law or any of its provisions, or under and by virtue of the said tariffs, orders or circulars of the said commission or any or either of them, or under and by virtue of the said commission law and the said tariffs, orders or circulars or any or either of them combined, and restraining the said railroad commission of Texas and said Reagan, McLean and Foster and each and all of them, from making, issuing or delivering to your orator, or causing to be promulgated, established or made effective against it, any further tariff or tariffs, circulars or orders, and from attempting so to do; and that in the meantime until the hearing hereof your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs,

circulars and orders heretofore made and issued by said railroad commission of Texas or by said Reagan, McLean and Foster, acting or claiming to act as said railroad commission of Texas, and each of them, may be cancelled and declared to be null, void and of no effect by a decree of this court, and that a mandatory injunction may be issued to the said commission and said commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them; and that such orders and decrees as may be made under the original bill of complaint herein of the Mercantile Trust Company shall be
251 adapted to the protection of your orator in respect of the matters herein alleged, and that your orator may have such further and other relief as this case may require as well as all costs. May it please your honors to grant unto your orator a writ or writs of subpœna to be issued out of and under the seal of this honorable court, and directed to the defendants The Mercantile Trust Company, The Railroad Commission of Texas, John H. Reagan, L. L. Foster and William P. McLean and Charles A. Culberson, commanding said defendants and each of them to appear in this court at some certain day to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be rendered herein.

THE TYLER SOUTHEASTERN RAILWAY COMPANY,
[L. S.] By PERKINS, GILBERT & PERKINS,
Its Solicitors.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

Guy Phillips, being duly sworn, says that he is the assistant secretary of The Tyler Southeastern Railway Company, the complainant above named, and has been such for more than a year
252 past that he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

GUY PHILLIPS.

Sworn to and subscribed before me this 7th day of June, 1892.

E. A. JACKSON,
[L. S.] *Notary Public, New York County.*

253 In the Circuit Court of the United States, Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants, *vs.* THE TYLER SOUTHEASTERN RY CO. and JOHN H. REAGAN *et al.*, Defendants.	No. —. Original Bill.
THE TYLER SOUTHEASTERN RY CO., Complainants, *vs.* THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.	Cross-bill.

To the honorable judges of said court:

The Mercantile Trust Company, trustee, complainant in the above-entitled cause, now amends its original bill herein filed as follows, to wit:

First. By adding at the middle of page 20, at the end of the first subdivision of the ninth paragraph of the bill of complaint, the following words and figures, to wit:

That there has necessarily been expended in cash in the construction and equipment of the lines of railway aforesaid owned and operated by the said railway company more than $14,000 per mile of said road, and that the same could not now be reconstructed and replaced for less than $13,000 per mile; that the lines of railway of said railway company have at all times been operated as economically as practicable, and that its operating expenses have been at all times as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for said company to operate said road for less than it has been operated; that for the year ending June 30, 1891, there were employed by said railway company seven general officers, who received during said year an average daily compensation of $4.15. Exclusive of its general officers, its employees received during said year an average compensation of $1.69, and for the year ending June 30, 1892, it had eleven general officers, who during said year received an average daily compensation of $9.31, and all of its employees, exclusive of general officers, during said year received an average daily compensation of $1.64; that at all times the said railway company has secured the services of its officers and employees as cheaply as practicable and has employed no more than necessary, and that the above were fair and reasonable rates of pay; that at all times the said railway company has secured all supplies material, and property of whatever character, used in the operation of its road, at the cheapest market price and at as low rates as same could be secured, and has secured and used no more than was actually necessary for the operation of its road; that your orator files herewith and makes part of this bill of complaint, marked, respectively, Exhibits "H" and "I," copies of the sworn reports by the officers of said

railway company to the railroad commission of Texas for one
254 month of the year ending June 30th, 1891, being the only month when said road was operated by said railway company, and for the year ending June 30th, 1892, on the forms prescribed by said commission which show its operating expenses in detail, each and every item of which was as reasonable in amount and as low as possible. Your orator alleges that the loss in revenue sustained by said company by the observance and application of the tariffs established by the railroad commission of the State of Texas as set forth in Exhibit "C" to the bill of complaint herein from the respective dates upon which each of said tariffs took effect until the 31st day of July, 1892, on freight actually moved by it to which said tariffs applied, amounted to $12,000,00; that the said loss is arrived at by taking each shipment of a commodity affected by the rates prescribed by said commission made by said company during the time that said rates were in effect and computing the amount which said company would have earned had it been allowed to charge the rates prevailing immediately prior to the time when the commission rates were issued and which had been, with slight changes, prevailing for several years prior thereto, and deducting from the amount so arrived at the amount which said company did actually earn under the rates prescribed by the railroad commission; that all of said commission rates were not in effect during the year ending July 31st, 1892, and if they had been the losses of said company would have been greater than shown above and would have considerably exceeded the sum of $18,000,00; that each and all of the tariffs issued by said company putting into effect the rates of said commission were issued under protest, and there were printed thereon by said company the words following, to wit: "This tariff is issued by order of the railroad commission of Texas under protest, reserving the right to contest the same in the courts;" that said reductions made by said commission affected about 70% of the State tonnage of said company and about 60% of its entire tonnage; that the tariffs established by said commission made greater reductions upon the lines of road owned by said company than upon the average road by reason of its geographical location and of its hauls of freight being short hauls, and by reason of the competition of other lines at all principal stations on its lines of railway, and by reason of the fact that it had no lines reaching the gulf, and said reductions in the rates theretofore charged on the following-named commodities actually shipped were substantially as follows, to wit:

	Per cent.
On grain, average	28
On hay	12½
On salt	41
On lumber (State and interstate)	20
On cotton seed and its products	8 to 29
On hulls (under 30 miles)	10 to 50
Cotton in bales	10 to 25

Grain, flour, and salt (less than car lots)	36 to 65
Wood	5 to 21
Coal	4 to 55
Common brick	9 to 50
Fire-brick	35 to 87
Cement and plaster	20 to 43
Lime (in car-loads)	1 to 40
Live stock	7 to 50
Wool (State and interstate)	1 to 46
Pig-iron (in car-loads)	
255 Junk	4 to 33⅓
Iron roofing (in car-loads)	46 to 66
Iron roofing (less than car-loads)	54 to 72
Melons and vegetables	22 to 58½

That the decrease in the rates and revenues of said railway company made by said commission have not and will not cause any such increase in the tonnage or the business of said road as will in any degree whatever make up or compensate for the loss in revenues caused by said reductions in rates.

That for the year ending June 30th, 1892, there was a decrease in the tonnage moved on said road as compared with the tonnage moved over the same road for the year ending June 30th, 1891; that said company, before and during the period when said commission tariffs were in effect, did, and now does, charge as high passenger rates as are allowed by the law of the State of Texas and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic; that the divisions of through rates now and at all times heretofore enjoyed and received by said company on interstate and foreign commerce moving over two or more lines has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas which said company did or could derive under the rates fixed by said commission—that is to say, for hauling the freight the same distance or performing the same service said company received largely more revenues on business interchanged with interstate roads or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of the said commission, and that the interstate rates of said company, as well as the interstate and foreign rates of all other lines doing an interstate and foreign business to and from Texas, now and at all times have been higher than the rates fixed for the same or corresponding distances by the said commission.

Second. Complainant reiterates each and every allegation in its bill of complaint and prays the court to allow this amendment to

be filed, and further prays as in its original bill and for all other and further orders and equitable relief in the premises.

FARRAR, JONAS & KRUTTSCHNITT,
ALEXANDER & GREEN,
Solicitors for Complainant.

JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

256 [Endorsed:] No. 189. U. S. circuit court, western district of Texas, at Austin. The Mercantile Trust Company, trustee, complainant, *vs.* The Tyler Southeastern R'y Co., John H. Reagan, & *als.* The Tyler Southeastern R'y Co., cross-complainant, *vs.* The Mercantile Trust Co., trustee; John H. Reagan, & *als.* Amendment to bill of complaint. Filed Mar. 23, 1893. B. G. Duval, clerk.

257 In the Circuit Court of the United States, Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants, *vs.* THE TYLER SOUTHEASTERN R'Y CO. and JOHN H. REAGAN *et al.*, Defendants.	No. — Original Bill.
THE TYLER SOUTHEASTERN R'Y CO., Complainants, *vs.* THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.	Cross-bill.

To the honorable judges of said court:

The Tyler Southeastern R'y Company, cross-complainant in the above-entitled cause, now amends its cross-bill herein filed as follows, to wit:

First. By adding at the close of folio 17 the following words and figures, to wit:

That there has necessarily been expended in cash in the construction and equipment of the lines of railway aforesaid owned and operated by the said railway company more than $14,000.00 per mile of said road, and that the same could now be reconstructed and replaced for less than $13,000.00 per mile; that the lines of said railway company have at all times been operated as economically as practicable, and that its operating expenses have been at all times as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for said company to operate said road for less than it has been operated; that for the year ending June 30, 1891, there were employed by said railway company seven general officers, who received during said year an average daily compensation of $1.15.

Exclusive of its general officers its employees received during said year an average compensation of $1.69, and for the year ending June 30, 1892, it had eleven general officers who during said year received an average daily compensation of $9.31, and all of its employees, exclusive of general officers, during said year received an average daily compensation of $1.64; that at all times the said railway company has secured the services of its officers and employees as cheaply as practicable and has employed no more than necessary, and that the above were fair and reasonable rates of pay; that at all times the said railway company has secured all supplies, material, and property of whatever character used in the operation of its road at the cheapest market price and at as low rates as same could be secured and has secured and used no more than was actually necessary for the operation of its road; that your orator here refers respectively to Exhibits "H" and "I" to complainants' amended bill, which are copies of its sworn reports by its officers to the
258 railroad commission of Texas for one month of the year ending June 30th, 1891, being the only month when said road was operated by your orator, and for the year ending June 30th, 1892, on the forms prescribed by said commission, which show its operating expenses in detail, each and every item of which was as reasonable in amount and as low as possible, all of which is adopted and averred as a part of this amendment as fully as if set out and plead herein.

Your orator alleges that the loss in revenue sustained by it by the observance and application of the tariffs established by the railroad commission of the State of Texas, as set forth in Exhibit "C" to the bill of complaint herein, from the respective dates upon which each of said tariffs took effect until the 31st day of July, 1892, on freight actually moved by it to which said tariffs applied amounted to $12,000.00; that the said loss is arrived at by taking each shipment of a commodity affected by the rates prescribed by said commission made by your orator during the time that said rates were in effect and computing the amount which your orator would have earned had it been allowed to charge the rates prevailing immediately prior to the time when the commission rates were issued, and which had been, with slight changes, prevailing for several years prior thereto, and deducting from the amount so arrived at the amount which your orator's company did actually earn under the rates prescribed by the railroad commission; that all of said commission rates were not in effect during the year ending July 31st, 1892, and if they had been the losses of your orator's company would have been greater than shown above and would have considerably exceeded the sum of $18,000.00; that each and all of the tariffs issued by your orator's company, putting into effect the rates of said commission, were issued under protest, and there were printed thereon by your orator's company the words following, to wit: "This tariff is issued by order of the railroad commission of Texas under protest, reserving the right to contest the same in the courts;" that said reductions made by said commission affected about 70% of the State tonnage of your orator's company

and about 60% of its entire tonnage; that the tariffs established by said commission made greater reductions upon the lines of road owned by your orator than upon the average road, by reason of its geographical location and of its hauls of freight being short hauls and by reason of the competition of other lines at all principal stations on its lines of railway and by reason of the fact that it had no lines reaching the gulf, and said reductions in the rates theretofore charged on the following-named commodities actually shipped were substantially as follows, to wit:

	Per cent.
On grain, average	28
On hay	12½
On salt	41
On lumber (State and interstate)	20
On cotton seed and its products	8 to 29
On hulls (under 30 miles)	10 to 50
Cotton in bales	10 to 25
Grain, flour, and salt (less than car lots)	36 to 65
Wood	5 to 21
Coal	4 to 55
Common brick	9 to 50
Fire-brick	35 to 87
Cement and plaster	20 to 43
Lime (in car-loads)	1 to 40
259 Live stock	7 to 50
Wool (State and interstate)	1 to 46
Pig-iron in car-loads	
Junk	4 to 33⅓
Iron roofing in car-loads	46 to 66
Iron roofing (less than car-loads)	54 to 72
Melons and vegetables	22 to 58½

That the total gross earnings of your orator for the year ending June 30th, 1892, was $133,060.74; that the total gross earnings on revenue of your orator derived from the transportation or freight for the year ending June 30th, 1892, was $81,269.12; that the total gross operating expenses of your orator's line of railway for the year ending June 30th, 1892, was $166,922.79, excluding interest on first-mortgage bonds; that the interest on the first mortgage bonds of your orator for the year ending June 30th, 1892, was $26,400.00, making a total of operating expenses and interest on first-mortgage bonds for said year of $193,322.79.

That there accrued against your orator for the year ending June 30th, 1892, in taxes the sum of $4,477.86, making a total of current liabilities for the year of $197,800.65 and a total deficit of $64,739.91.

That there was expended during said year for betterments on said property the sum of $114.88.

That the decrease in the rates and revenues of your orator's railway made by said commission have not and will not cause any such increase in the tonnage of the business of your orator's road

as will in any degree whatever make up or compensate for the loss in revenues, caused by said reductions in rates.

That for the year ending June 30th, 1892, there was a decrease in the tonnage moved on your orator's road as compared with the tonnage moved over the same road for the year ending June 30th, 1891; that your orator's company, before and during the period when said commission tariffs were in effect, did and now does charge as high passenger rates as are allowed by the law of the State of Texas, and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic; that the divisions of through rates now and at all times heretofore enjoyed and received by your orator's company on interstate and foreign commerce moving over two or more lines has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas which your orator's company did or could derive under the rates fixed by said commission—that is to say, for hauling the freight the same distance or performing the same service your orator's company received largely more revenues on business interchanged with interstate roads or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of the said commission, and that your orator's interstate rates as well as the interstate and foreign rates of all other lines doing an interstate and foreign business to and from Texas now and at all times have been higher than the rates fixed for the same or corresponding distances by the said commission.

260 Second, Cross-complainant reiterates each and every allegation in its cross-bill of complaint and prays the court to allow this amendment to be filed, and further prays as in its original cross-bill and for all other and further orders and equitable relief in the premises.

PERKINS, GILBERT & PERKINS,
Solicitors for Cross-complainant Tyler Southeastern R'y Co. of Tx.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

261 [Endorsed:] No. 189. Mercantile Trust Co., compl't, *vs.* Tyler Southeastern R'y Co., John H. Reagan, *et als.* and Tyler Southeastern R'y Co. *vs.* Mercantile Trust Co. *et als.* Amendment to cross-bill. Filed Mar. 23, 1893. B. G. Duval, clerk, by D. H. Hart, d'y.

262 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant, *v.* THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants. } No. 189.

The defendants, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, respectfully ask leave of the court to withdraw their answers heretofore filed by them in this cause to the original bill filed by complainant and the cross-bill filed by the defendant railway company, and to permit them to file a demurrer to said original complaint and cross-bill, so that the same may be considered as if no answer had been filed to said original and cross action, and that the demurrer was filed on the rule day, to which the subpœnas were returnable.

The purpose of this motion is to raise in a simple and direct manner the questions of law involved in this cause, and it has no other object in view. No delay will be occasioned thereby and no injury to complainant or cross-complainant, inasmuch as the defendants offer to proceed immediately with the consideration of the demurrer, and if the same be overruled, leave will not be asked to file answers to said original and cross actions, but judgment may be rendered upon said demurrer, and failure of defendants to answer the bill and cross-bill, from which judgment defendants will appeal.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Defendants.

(Endorsed:) No. 189. The Mercantile Trust Company, trustee, complainant, *v.* The Tyler Southeastern Railway Company, John H. Reagan *et al.*, defendants. Motion to withdraw answers and file a demurrer. Filed March 20, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

263 AUSTIN, TEXAS, *March* 23, 1893.

United States Circuit Court, Western District of Texas, at Austin.
In Equity.

MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TYLER SOUTHEASTERN RAILWAY COMPANY *et als.* } 189. Original Bill.

THE TYLER SOUTHEASTERN RAILWAY COMPANY *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.* } Cross-bill.

THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *et als.*	188. Original Bill.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.*	Cross-bill.
THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TEXAS & PACIFIC RAILWAY CO., JOHN H. REAGAN, *et als.*	186. Original Bill.
264 THE TEXAS & PACIFIC RAILWAY CO. *vs.* THE MERCANTILE TRUST CO., JOHN H. REAGAN, *et als.*	Cross-bill.
THE FARMERS' LOAN & TRUST CO., Trustee, *vs.* THE GULF, COLORADO & SANTA FÉ R'Y CO. *et als.*	190. Original Bill.
THE GULF, COLORADO & SANTA FÉ R'Y CO. *vs.* THE FARMERS' LOAN & TRUST CO, JOHN H. REAGAN, *et als.*	Cross-bill.
THE FARMERS' LOAN & TRUST CO, Trustee, *vs.* THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *et als.*	187. Original Bill.
THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *vs.* THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN, *et als.*	Cross-bill.

These causes came on this day to be heard on the motions of defendants John H. Reagan, L. L. Foster, William P. McLean, and Charles A. Culberson for leave to withdraw their answers to the bills of complaint and cross-bills in the above-entitled causes and for leave to file demurrers to said bills and cross-bills. Whereupon and on consideration whereof complainants and cross-complainants consenting to the granting of said leave, subject to terms as
265 hereinafter set forth, and said defendants not objecting to said terms—

It is ordered, adjudged, and decreed that said defendants be and they are hereby allowed to withdraw their said answers to said bills

and cross-bills in said causes and to file demurrers thereto upon the terms and conditions following, viz:

(1.) That said defendants do pay all costs of taking testimony and depositions in said causes, against them to be taxed, and it is hereby ordered that execution do issue therefor.

(2.) That said complainants and cross-complainants be and they are hereby allowed to amend their respective bills and cross-bills before said demurrers be filed, and in such manner as they may be advised.

March 23, 1893.

A. P. McCORMICK, *Judge.*

By consent of all parties in the above causes, it is hereby ordered that the exhibits marked "H" and "I" to the original bills and cross-bills shall be made a part of the records in these causes, the originals, without copying the same, to accompany the records as a part of the same to the Supreme Court of the United States.

March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

266 MERCANTILE TRUST CO. *vs.* TYLER SOUTHEASTERN RY CO., JNO. H. REAGAN, *et als.* } No. 189.

Now comes complainant and sets down the above cause for hearing on bill and answer as to the defendant The Tyler Southeastern Ry Co.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk,*
By D. H. HART, *Deputy.*

[Endorsed:] Rule setting down cause on bill and answer.

267 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant, *against* THE TYLER SOUTHEASTERN RAILWAY COMPANY, John H. Reagan, *et al.*, Defendants. } In Equity. No. 189.

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson to complainant's bill as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the bill of complaint and for causes of demurrer show:

That said complainant hath not in and by said bill, made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore, these defendants pray judgment of this honorable court whether they shall be compelled to further answer and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of the said bill, defendants say:

(1.) That it does not appear from the allegations of said bill that the complainants have any interest in the subject-matter of the complaint and in equity cannot demand the relief sought
268 in the prayer of said bill. Because the injury complained of is too remote, and the bill shows no legal damage to complainant, because the relief asked by complainant in effect deprives the railway company of the management of its own affairs and substitutes the judgment of the court for that of the directory of the railway company.

(2.) Because it appeareth from the face of said bill that complainants have a plain and adequate remedy at law.

(3.) Because it appeareth from the face of the bill of complaint that the suit is against the State of Texas and consequently obnoxious to the 11th amendment of the Constitution of the United States.

(4.) Because it appeareth from the face of the bill of complaint that complainant seeks to enjoin the judgment of a special tribunal of the State of Texas, said tribunal having jurisdiction under the constitution and laws of Texas to try and determine the special matters sought to be enjoined, and from which judgment a plain and adequate remedy by appeal had been granted to all parties interested by the laws of Texas.

(5.) Because it appears from the bill that complainants seek to stay judicial proceedings when necessary to be brought under the laws and in the name of the State of Texas in the courts of Texas.

(6.) Because it appears upon the face of said bill that the complainant seeks to enjoin the attorney general of the State of Texas from bringing any action or enforcing penalties against the defendant railway company, provided by law to enforce obedience upon the part of the defendant company to the laws of the State of Texas.

(7.) Because it appears from the face of the bill that section 5, of the act of the State of Texas, known as the railroad commission act and set forth in the bill, of which complainant complains as unconstitutional because depriving it of due process of law, is not obnoxious as alleged to the fourteenth amendment to the Constitution of the United States, but that the said section taken in connection with other sections of the said railroad commission act is a valid provision and constitutional.

(8.) Because it appears from the face of the bill that section 5 of the railroad commission act, if obnoxious to the Constitution of the United States, does not affect the law as a whole and said commis-

sion law is valid and constitutional though section 5 be de-
269 clared unconstitutional and void, and the relief prayed for by complainant to enjoin the railroad commission of the State of Texas from ever hereafter making any rates or issuing or delivering any further tariffs, orders or circulars or the relief sought by complainant's bill enjoining all persons hereafter from claiming any right under said law, cannot in equity be granted by this court.

(9.) Because it appears that the commission law, as set forth in complainant's bill and upon the invalidity of which the whole of the relief asked by complainant is based, is a valid and constitutional law and the court has no jurisdiction in this case because the law being constitutional, no Federal question is involved nor does it appear that said cause arises under the Constitution or any law of the United States.

(10.) Because it appears from the bill that the allegations of the unreasonableness of rates fixed by the State commission and of which it complains and seeks relief by injunction is based upon the operating expenses, the interest on the bonded indebtedness and the stock issue of the defendant railway, which complainant alleges the defendant railway should be permitted to earn. That said allegation setting up said claim as a basis of the reasonableness of the rate is insufficient in equity upon which to grant the relief prayed for.

(11.) That to so much of the allegation of complainant's bill as sets up the invalidity of circular 34, issued by the railroad commission of the State of Texas, which is made a part of said bill, defendants say the same is insufficient in that it does not show that the requirements contained in said circular are unreasonable regulations imposed on defendant company. Nor does it interfere with interstate commerce as alleged.

(12.) That so much of the allegations in complainant's bill as seek to attack the validity of the law creating the railroad commission and prescribing its powers because of combining judicial legislation and executive powers, are insufficient in law or equity upon which to base the relief prayed for.

(13.) That defendants further demurring, say that this court has no jurisdiction because it appears from the bill and the cross-bill and record generally, that there is a fraudulent combination between complainant and the defendant railroad company to
270 obtain jurisdiction in this court by creating a diversity of citizenship in order that the defendant company, which is a domestic corporation chartered under the laws of Texas, should be enabled to apply for affirmative relief by means of the cross-bill filed by it against these defendants.

(14.) Defendants further demurring say that so much of said bill as sets up want of notice of the time and place of fixing rates by the railroad commission of Texas, is insufficient in law or equity, because it appears by the bill that a notice was given before fixing rates and that defendant railroad company did appear both by the traffic agent and counsel and discuss the rates prior to their being fixed by the commission. And further demurring, defendants say

that the want of notice complained of is under a law of the State of Texas and no Federal question arises giving this court jurisdiction to determine its sufficiency.

(15.) Defendants further demurring, say that so much of complainant's bill as sets up that the commission law of Texas is obnoxious to the 14th amendment in not providing due process of law or depriving the defendant railroad of the equal protection of the law, is insufficient in this, that said objections are not shown by any allegations in said bill to appear upon the face of the law complained of by said complainant and there exists any Federal question arising upon the face of said law by which this court can take jurisdiction.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, the defendants pray the judgment of the court whether they shall be compelled to make answer to such parts of said bill as are herein specifically demurred to and prays to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for Said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

271 UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me, this the 23rd day of March 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

(Endorsed:) No. 189. In the United States circuit court for the western district of Texas, at Austin. The Mercantile Trust Company, trustee, complainants, *vs.* The Tyler Southeastern Railway Company, John H. Reagan, *et al.*, defendants. The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson filed March 23, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

272 In the United States Circuit Court for the Western District of Texas, at Austin. In Equity.

THE TYLER SOUTHEASTERN R'Y CO., Cross-complainant,
vs.
THE MERCANTILE TRUST CO., JOHN H. REAGAN, *et als.*, Defendants.

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill of above-named cross-complainant as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill of said cross-complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross-bill and for causes of demurrer show:

That said cross-complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore, these defendants pray judgment of this honorable court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of said cross-bill, defendants say:

(1.) That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and said original bill falling, said cross-bill must fall with it. The cross-bill cannot be maintained without the main bill to support it.

(2.) For further grounds of special demurrer to said cross-
273 bill, defendants adopt the special demurrers interposed by them in this cause to the original bill, numbered from two to fifteen, inclusive.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the court whether they shall be compelled to make answer to such parts of said cross-bill as are herein specifically demurred to, and pray to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA,
Western District of Texas.

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23d day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

(Endorsed:) No. 189. In the United States circuit court for the western district of Texas, at Austin. The Tyler Southeastern Railway Company, cross-complainant, against The Mercantile Trust Company, Jno. H. Reagan, *et als.*, defendants. The demurrer of Jno. H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill. Filed March 23, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

274 In the United States Circuit Court for the Western District of Texas, at Austin. In Equity.

THE TYLER SOUTHEASTERN RAILWAY COMPANY, Cross-complainant)
vs.
THE MERCANTILE TRUST CO., JOHN H. REAGAN, *et al.*, Defendants.)

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill of above-named cross-complainant, as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill of said cross-complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross-bill, and for causes of demurrer show—

That said cross-complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of said cross-bill defendants say:

(1.) That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and said original bill falling said cross-bill must fall with it. The cross-bill cannot be maintained without the main bill to support it.

275 (2.) For further grounds of special demurrer to said cross-bill defendants adopt the special demurrers interposed by them in this cause to the original bill numbered from two to fifteen, inclusive.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the court whether they shall be compelled to make answer to such

parts of said cross-bill as are herein specifically demurred to and pray to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23 day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *D'y.*

276–280 [Endorsed:] No. 189. In the United States circuit court for western district of Texas, at Austin. The Tyler Southeastern Railway Company, cross-complainant, against The Mercantile Trust Company, Jno. H. Reagan, *et al.*, defendants. The demurrer of Jno. H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill. Filed Mar. 23, 1893. B. G. Duval, clerk, by D. H. Hart, d'y.

281 MERCANTILE TRUST CO.
vs.
TYLER SOUTHEASTERN RAILWAY CO., JOHN H. REAGAN, *et als.* } No. 189.

Now comes complainant, through Mess. Farrar, Jonas & Kruttschnitt, its solicitors, and sets down the demurrer of defendants John H. Reagan, L. L. Foster, Wm. P. McLean, and Charles A. Culberson to be argued.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy.*

[Endorsed:] Rule setting down demurrer to bill of complaint for argument.

282 (*Cross-bill.*)

TYLER SOUTHEASTERN RAILWAY CO.
vs.
MERCANTILE TRUST CO., JNO. H. REAGAN, *et als.* } No. 189.

Now comes cross-complainant, The Tyler Southeastern Railway Company, through E. B. Perkins, Esq., its solicitor of record, and sets down the demurrer of John H. Reagan, William P. McLean, L. L. Foster, and Charles A. Culberson to the cross-bill herein for argument.

March 23, 1893.

Attest:

B. G. DU VAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Rule setting down demurrer to cross-bill for argument.

283 MERCANTILE TRUST CO.
vs.
TYLER SOUTHEASTERN RAILWAY CO., JNO. H. REAGAN, *et al.* } No. 189.

Now come defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson, defendants in the above-entitled cause, through Charles A. Culberson, their solicitor of record herein, and decline further to answer the bill of complaint as amended or cross-bill as amended in the above cause, stand upon their demurrers, and submit said cause to the court for a final decree.

March 23, 1893.

Attest:

B. G. DU VAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Rule declining to further answer bills and submitting cause for final decree.

284 In the Circuit Court of the United States, Fifth Circuit, Western District of Texas. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants,
vs.
THE TYLER SOUTHEASTERN R'Y CO. and JOHN H. REAGAN *et al.*, Defendants. } No. 189. Original Bill.

THE TYLER SOUTHEASTERN RAILWAY CO., Complainants,
vs.
THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants. } Cross-bill.

This cause having been set down for final hearing on the pleadings and evidence and being called for hearing thereon, the de-

fendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson presented their motion, on file herein, for leave to withdraw their answers and file demurrers, which motion was granted, conditioned upon the said defendants paying all costs of taking depositions and evidence herein against them to be taxed and for which execution may issue and on condition that the complainant and cross-complainant have leave to amend before the filing of the demurrers of the said defendants, which leave was granted, and whereupon said amendments were filed and the demurrers of the said defendants were filed to the original bill of complaint and cross-bill in this cause, as also to all amendments thereto, and were, by complainant and cross-complainant, set down for argument by consent, and were by all parties forthwith submitted; and thereupon, in consideration thereof,
285 it was ordered, adjudged, and decreed that said demurrers be, and the same are hereby, overruled, and the defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson having entered of record their refusal to make further answer and the fact that they stood upon their demurrers and all parties submitting the cause for final decree, it is now, upon consideration thereof, ordered, adjudged, and decreed that the bill of complaint, as amended, and the cross-bill of complaint, as amended in the above-entitled cause, be, and the same are hereby, sustained and taken for confessed; and the said cause coming on further to be heard upon the bill of complaint herein, as amended, and upon the answer of the defendant railway company thereto, confessing the same, it is further ordered, adjudged, and decreed as follows, to wit:

First. That the injunctions heretofore issued in this cause be, and the same are hereby, made perpetual; and accordingly—

Second. That defendant The Tyler Southeastern Railway Company be, and it is hereby, perpetually enjoined, restrained, and prohibited from putting or continuing in effect the rates, tariffs, circulars, or orders of the railroad commission of Texas, or either or any of them, as described in the bill of complaint herein and in "Exhibit C" thereto and therewith filed, and from charging or continuing to charge the rates specified in said tariffs, circulars, or orders or either or any of them.

Third. It is further ordered, adjudged, and decreed that the defendants The Railroad Commission of Texas and the defendants John H. Reagan, Wm. P. McLean, and L. L. Foster, acting as the railroad commission of Texas, and their successors in office, and the defendant Charles A. Culberson, acting as the attorney general of the State of Texas, and his successors in office, be, and
286 they are hereby, perpetually enjoined, restrained, and prohibited from instituting or authorizing or directing any suit or suits, action or actions, against the defendant railway company for the recovery of any penalties under and by virtue of the provisions of the act of the legislature of the State of Texas approved April 3rd, 1891, and fully described in the bill of complaint, or under or by virtue of any of the said tariffs, orders, or circulars of the said railroad commission of Texas, or any or either of them, or under

or by virtue of the said act and the said tariffs, orders, or circulars of said railroad commission, or any or either of them combined, and said defendants, Reagan, McLean, and Foster, and the Railroad Commission of Texas, are further perpetually enjoined from certifying any copy or copies of any of said orders, tariffs, or circulars, or from delivering or causing or permitting to be delivered certified copies of any of said orders, tariffs, or circulars to the said Culberson or any other party, and from furnishing the said Culberson or any other party any information of any character for the purpose of inducing, enabling, or aiding him or any other party to institute or prosecute any suit or suits against the said defendant railway company for the recovery of any penalty or penalties under the said act.

Fourth. It is further ordered, adjudged, and decreed that the said railroad commission of Texas and the said Reagan, McLean, and Foster be perpetually enjoined, restrained, and prohibited from making, issuing, or delivering to the said railway company or causing to be made, issued, or delivered to it any further tariff or tariffs, circular or circulars, order or orders.

Fifth. It is further ordered, adjudged, and decreed that all other individuals, persons, or corporations be, and they are hereby, perpetually enjoined, restrained, and prohibited from instituting or prosecuting any suit or suits against the said railway company for the recovery of any damages, overcharges, penalty, or penalties under or by virtue of the said act or any of its provisions or under and by virtue of the said tariffs, orders, or circulars of the said railroad commission of Texas or any or either of them or under and by virtue of the said act and the said tariffs, orders, and circulars or any or either of them combined.

287

Sixth. It is further ordered, adjudged, and decreed that all rates, tariffs, circulars, and orders heretofore made and issued by said commission, and fully described in "Exhibit C" to the bill of complaint herein, be, and they are hereby, declared to be unreasonable, unfair, and unjust as to complainant and cross-complainant, and they are hereby cancelled and declared to be null, void, and of no effect.

Seventh. It is further ordered, adjudged, and decreed that all costs herein be taxed against said defendants Reagan, McLean, and Foster and Culberson and the Railroad Commission of Texas, and that execution may issue therefor.

A. P. McCORMICK, *Cir. Judge.*

Austin, Tex., March 23d, 1893.

288 [Endorsed:] No. 189. U. S. circuit court, western district of Texas, at Austin. The Mercantile Trust Co., trustee, *vs.* The Tyler Southeastern R'y Co., John H. Reagan, & *als.* The Tyler Southeastern Railway Company, cross-complainant, *vs.* The Mercantile Trust Co., John H. Reagan, & *als.* Final decree. Filed & entered M'ch 23, '93. B. G. Duval, cl'k, by D. H. Hart, d'y.

288½–313 In the United States Circuit Court for the Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE TEXAS AND PACIFIC RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants. } No. 186.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE INTERNATIONAL AND GREAT NORTHERN RAILROAD Company, Thomas M. Campbell, John H. Reagan, *et als.*, Defendants. } No. 187.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 188.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 189.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants. } No. 190.

314 In the Supreme Court of the United States.

THE MERCANTILE TRUST COMPANY, Trustee,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, and C. A. CULBERSON.

THE TYLER SOUTHEASTERN RAILWAY COMPANY, Cross-complainant,
against
THE MERCANTILE TRUST COMPANY, Trustee; JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, and C. A. CULBERSON.

The appellants assign the following errors in this case:

1. The court erred in entertaining this suit and entering the decree because the same as to the attorney general of Texas and the railroad commission is in effect a suit against the State of Texas and inhibited by the XI amendment to the Constitution of the United States.

2. The court erred in rendering the decree against appellants because the act of the legislature of the State of Texas creating the railroad commission of Texas, approved April 3rd, 1891, is in all respects valid and constitutional.

3. The court erred in rendered the decree against appellants in so far as it inhibited the attorney general from instituting suits by authority of and in the name of the State of Texas to enforce said law and to recover the penalties therein provided for.

4. The court erred in rendering the decree against the appellants, The Railroad Commission, prohibiting said commission from hereafter adopting and promulgating any freight rates, because if sections 5, 6, and 7 of the act approved April 3rd, 1891, or either of them are void the remainder of the law is valid and constitutional.

5. The court erred in entertaining this suit and entering the decree against appellants because whether the rates fixed by the railroad commission of Texas are unreasonable is a legislative and not a judicial question and may not be inquired into except in the manner provided by said act approved April 3rd, 1891.

6. The court erred in entering the decree against appellants because the measure of a reasonable rate, as alleged in the complaint and cross-complaint, is not the legal measure or test thereof.

7. The court erred in rendering the decree against appellants because, as alleged in the complaint and cross-complaint, the rates fixed by the commission are just and reasonable.

C. A. CULBERSON,
HENRY C. COKE,
W. S. SIMPKINS,
Solicitors for Appellants.

(Endorsed:) ≡ 189. The Mercantile Trust Company, trustee, *v.* The Tyler Southeastern R'y Co., John H. Reagan, *et al.* The Tyler Southeastern R'y Co., cross-complainant, *v.* The Mercantile Trust Company, John H. Reagan, *et al.* Assignment of errors. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

315 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant, *v.* THE TYLER SOUTHEASTERN RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants.	No. 189.

Your petitioners, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, defendants in the above-entitled cause, would respectfully represent and show that in said cause pending in the United States circuit court in and for the western district of Texas, at Austin, there was entered on the 23rd day of March, 1893, in said

court, a final decree to the prejudice and injury of your petitioners; which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, petitioners pray that they may be allowed an appeal in said cause to the Supreme Court of the United States, and that the proper orders touching the security required of them, if any, may be made.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for Defendants.

The above application for appeal to the Supreme Court of the United States is on this day, to wit, March 2nd, 1894, allowed as prayed for upon defendants entering into bond, within the time and conditioned as the law requires, in the sum of $500.00, payable to complainant and cross-complainant.

T. S. MAXEY, *Judge.*

(Endorsed:) No. 189. The Mercantile Trust Company, trustee, complainant, *v.* The Tyler Southeastern Railway Company, John H. Reagan, *et al.*, defendants. Application for appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

316–319 Circuit Court of the United States of America for the Western District of Texas, in the 5th Circuit.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
vs.
THE TYLER SOUTHEASTERN RAILWAY CO., JOHN H. REAGAN, *et al.*, Defendants.

THE TYLER SOUTHEASTERN RAILWAY COMPANY, Cross-complainant,
vs.
THE MERCANTILE TRUST COMPANY, Trustee; JOHN H. REAGAN, *et al.*, Defendants.

Know all men by these presents that we, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, of the city of Austin, Travis county, Texas, and H. G. Askew and E. D. True, are held and firmly bound unto the above-named Mercantile Trust Company and the Tyler Southeastern Railway Company in the sum of five hundred dollars ($500), to be paid to the said Mercantile Trust Company and Tyler Southeastern Railway Company; for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 2nd day of March, in the year of our Lord eighteen hundred and ninety-four.

Whereas the above-named John H. Reagan, W. P. McLean, L. L.

Foster, and C. A. Culberson have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit on March 23, 1893, by the judge of the circuit court of the United States for the western district of Texas:

Now, therefore, the condition of this obligation is such that if the above-named John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. REAGAN,
W. P. McLEAN,
L. L. FOSTER,
C. A. CULBERSON,
By C. A. CULBERSON, *Solicitor.*
H. G. ASKEW, *Surety.*
E. D. TRUE, *Surety.*

The foregoing bond is approved this the 2nd day of March, A. D. 1894.

T. S. MAXEY, *Judge.*

(Endorsed:) # 189. The Mercantile Trust Co., trustee, *v.* The Tyler Southeastern R'y Co., John H. Reagan, *et al.* The Tyler Southeastern R'y Co., cross-complainant, *v.* The Mercantile Trust Co., John H. Reagan, *et al.* Bond on appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

320 In the Supreme Court of the U. S., October Term, 1893.

Jno. H. Reagan & *als.* *vs.* Mercantile Trust Co. and The Tyler Southeastern R'y Co. of Texas.	No. 1169.

In the above cause it is stipulated that the following portions of the record be omitted in printing, viz:

(1.) Exhibits B & C to bill of complaint.
(2.) Pp. 277, 278, 279, 280 of Record.
(3.) " 317, 318, 319 of Record.
(4.) Following pages of Exhibits H & I, viz:
2–21, inclusive.
24–27, "
32, 33.
36–41, "
46, 47.
52–57, "
66, 67.
70–83, "

Exhibits B & C and the opinion of the lower court are identical with Exhibits B & C and the opinion in suit No. 928, submitted simultaneously herewith, and to which record reference is hereby made.

E. B. KRUTTSCHNITT,
Solicitor for Complainant.
W. S. PIERCE,
Solicitor for Cross-complainant,
By E. B. KRUTTSCHNITT.
C. A. CULBERSON,
— *Appellants.*

321 [Endorsed:] Case No. 15,553. Supreme Court U. S., October term, 1893. Term No., 1169. John H. Reagan *et al.*, app'ts, *vs.* The Mercantile Trust Company *et al.* Stipulation to omit parts of record in printing. Filed Ap'l 5, 1894.

322 "EXHIBIT H."

ANNUAL REPORT OF THE TYLER SOUTHEASTERN RAILWAY COMPANY TO THE RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1891. FILED MARCH 23, 1893. B. G. DUVAL, CLERK, BY D. H. HART, D'Y.

322 (22) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies." "Stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rents Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

*See notation on page 18.

322 (23) *Recapitulation of Funded Debt.*

Class of debt.	Amount issued.	Amount outstanding.	Interest. Amount accrued during year.	Interest. Amount paid during year.
Mortgage bonds—page 19	660,000 00	660,000 00	2,280 00	*
Miscellaneous obligations—page 21	0 00	0 00		0 00
Income bonds—page 19	330,000 00	330,000 00	0 00	
Total	990,000 00	990,000 00	2,280 00	

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal. Amount paid during year.	Principal. Amount funded or otherwise disposed of.	Interest. Amount accrued during year.	Interest. Amount paid during year.	Rate.
			None				
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1892.	
Cash		Receiver's certificates	
Bills receivable		Loans and bills payable	
Due from agents		Audited vouchers and accounts	
Net traffic balances due from other companies		Wages and salaries	
Due from solvent companies and individuals	13,114 21	Net traffic balances due to other companies	
Other cash assets (excluding "materials and supplies")*		Dividends not called for	
		Matured interest coupons unpaid (including coupons due July 1)	
		Rents due July 1	
		Miscellaneous	
Balance—current liabilities		Balance—cash assets	13,114 21
Total	13,114 21	Total	13,114 21

*Materials and supplies on hand, $——.

(See general balance-sheet—page 49.)

322 (28) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 28," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1892," there should be entered the amounts returned as "total cost to June 30, 1891," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

*Owing to the fact that no division was made as between cost of road and equipment for the property purchased, we find it impossible to fill up this column.

322 (20) *Cost of Road, Equipment, and Permanent Improvements.*

Item.	Expenditures during year.			Total cost to June 1st, 1891.	Total cost to June 30, 1891.	Cost per mile.
	Included in operating expenses.	Not included in operating expenses.				
		Charged to income account as permanent improvements.	Charged to construction or equipment.			
Construction:						
Right of way						
Other real estate						
Fences						
Grading and bridge and culvert masonry				Cannot give cost of construction and equipment separately. Total cost is arrived at as follows:		
Bridges and trestles						
Rails						
Ties						
Other super-tructure						
Buildings, furniture and fixtures						
Shop machinery and tools						
Engineering expenses						
Interest during construction						
Discount on securities sold for construction						
Telegraph line						
Wharfing, etc						
Sidings and yard extensions						
Terminal facilities and elevators						
Road built by contract						
Purchase of constructed road						
Other items						
Total construction	0 00	0 00	0 00			
Equipment:						
Locomotives						
Passenger cars						
Sleeping, parlor and dining cars						
Baggage, express and postal cars						
Combination cars						
Freight cars						
Other cars of all classes						
Floating equipment						
Total equipment	0 00	0 00	0 00			
Grand total cost construction, equipment, etc	0 00	0 00	0 00	1,240,000 00	*1,240,000 00	15,995 49

First mortgage bond	660,000 00
Second mtg. income bond	330,000 00
Capital stock	250,000 00
Total	1,240,000 00

322 (30) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 30," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified in any of the captions under "deductions from income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1891, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks.

*"Cash and bonds received from reorganization committee, 22,275.00."

322 (31) *Income Account.*

(For roads making operating reports.)

Gross earnings from operation—page 35	9,027 86	
Less operating expenses—page 45	13,438 65	
Income from operation		
Deficit		4,410 79
Dividends on stocks owned—page 37	0 00	
Interest on bonds owned—page 39	0 00	
Miscellaneous income, less expenses—page 41	0 00	
Income from other sources		0 00
Total income		
Deficit		4,410 79
Deductions from income:		
Interest on funded debt accrued—page 23	2,200 00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	0 00	
Rents—page 47, A	0 00	
Taxes	350 00	
Permanent improvements—page 29	0 00	
Other deductions	368 73	
Total deductions from income		2,918 73
Net income		
Deficit		7,329 52
Dividends, — per cent., common stock	0 00	
Dividends, — per cent., preferred stock	0 00	
Other payments from net income	0 00	
Total		0 00
Surplus from operations of year ending June 30, 1891		
Deficit from operations of year ending June 30, 1891		7,329 52
Surplus on June 30, 1890 (from "general balance-sheet," 1890 report)		
Deficit on June 30, 1890 (from "general balance-sheet," 1890 report)		
Additions for year*		22,275 00
Deductions for year		
Surplus on June 30, 1891 (for entry on "general balance-sheet," page 51)		14,945 48
Deficit on June 30, 1891 (for entry on "general balance-sheet," page 49)		

322 (34) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 34," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

* See operating expenses.

322 (35) *Earnings from Operation.*

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	3,289 09		
Less repayments:			
Tickets redeemed		70	
Excess fares refunded		0 00	
Other repayments		0 00	
Total deductions		70	
Total passenger revenue			3,288 39
Mail			450 67
Express			224 23
Extra baggage and storage			53 35
Other items			0 00
Total passenger earnings			4,016 64
Freight:			
Freight revenue	4,830 29		
Less repayments:			
Overcharge to shippers		0 60	
Other repayments		45	
Total deductions		45	
Total freight revenue			4,829 84
Stock yards			0 00
Elevators			0 00
Other items			0 00
			0 00
Total freight earnings			4,829 84
Total passenger and freight earnings			8,846 48
Other earnings from operations:			
Car mileage—balance*			
Switching charges—balance			0 00
Telegraph companies			52 90
Rents from tracks, yards, and terminals—page 41			0 00
Rents not otherwise provided for			0 00
Other sources			128 48
Total other earnings			181 38
Total gross earnings from operation			9,027 86

322 (42) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 42," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

322 (43) *Operating Expenses.*

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	1,136 85	945 28	2,082 13
2. Renewals of rails	2 13	1 77	3 90
3. Renewals of ties	725 68	603 41	1,329 09
4. Repairs of bridges and culverts	1,344 80	1,118 20	2,463 00
5. Repairs of fences, road crossings, signs, and cattle-guards	0 00	0 00	0 00
6. Repairs of buildings	29 84	16 49	46 33
7. Repairs of docks and wharves	0 00	0 00	0 00
8. Repairs of telegraph	85	71	1 56
9. Other expenses	13 20	10 98	24 18
Total	3,253 35	2,696 84	5,950 19
Maintenance of equipment:			
10. Repairs and renewals of locomotives	177 35	147 46	324 81
11. Repairs and renewals of passenger cars	722 06	0 00	722 06
12. Repairs and renewals of freight cars	0 00	670 06	670 06
13. Repairs and renewals of ferry-boats, tugs, floats, and barges	0 00	0 00	0 00
14. Shop machinery, tools, etc	67 26	55 92	123 18
15. Other expenses	57 97	48 19	106 16
Total	1,024 64	921 63	1,946 27
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	364 96	602 43	967 39
17. Fuel for locomotives	446 48	573 67	1,020 15
18. Water supply for locomotives	57 82	48 08	105 90
19. All other supplies for locomotives	32 65	27 15	59 80
20. Wages of other trainmen	181 50	618 80	800 30
21. All other train supplies	94 12	42 69	136 81
22. Wages of switchmen, flagmen, and watchmen	77 28	339 10	416 38
23. Expense of telegraph, including train-dispatchers and operators	76 82	264 55	341 37
24. Wages of station agents, clerks, and laborers	245 74	774 89	1,020 61
25. Station supplies	2 29	18 78	21 07
26. Switching charges—balance	0 00	0 00	0 00
27. Car mileage—balance	0 00	*304 99	*304 99
28. Loss and damage	2 17	0 00	2 17
29. Injuries to persons	1 64	8 92	10 56
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies	0 00	0 00	0 00
31. Other expenses	2 60	40 61	43 21
Total	1,586 05	3,054 68	4,640 73

[* In red ink in copy.]

322 (44) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 44," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 42.

Explanatory Remarks.

322 (45) *Operating Expenses*—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	183 63	170 80	354 43
33. Salaries of clerks	76 47	63 58	140 05
34. General office expenses and supplies	11 48	9 53	21 01
35. Agencies, including salaries and rent	47 19	80 31	127 50
36. Advertising	38 37	1 00	39 37
37. Commissions	0 00	0 00	0 00
38. Insurance	21 50	17 29	38 79
39. Expense of fast freight lines	0 00	0 00	0 00
40. Expense of traffic associations	0 00	0 00	0 00
41. Expense of stock yards and elevators	0 00	0 00	0 00
42. Rents for tracks, yards, and terminals—page 47 B	0 00	0 00	0 00
43. Rents not otherwise provided for	9 90	8 23	18 13
44. Legal expenses	46 15	38 37	84 52
45. Stationery and printing	40 69	36 27	76 96
46. Other general expenses	38	32	70
Total	475 76	425 70	901 46
Recapitulation of expenses:			
47. Maintenance of way and structures	3,253 35	2,696 84	5,950 19
48. Maintenance of equipment	1,024 64	921 63	1,946 27
49. Conducting transportation	1,586 05	3,054 68	4,640 73
50. General expenses	475 76	425 70	901 46
Grand total	6,339 80	7,098 85	13,438 65
Percentage of operating expenses to earnings			148 86

322 (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1891, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1892, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease" in the account specified.

"Cash and current assets," page 49, and "current liabilities," page 51, should each be given as a total and not as a balance, corresponding to data returned in the lower table on page 23.

If there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

* Represents interest account prior to date new company commenced to operate property, June 1, 1891.

322 (49) *Comparative General Balance-sheet.*

June 30, 1891.		Assets.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
		Cost of road—page 29		1,240,000 00		
		Cost of equipment—page 29				
		Stocks owned—page 37		0 00		
		Bonds owned—page 39		0 00		
		Other permanent investments		0 00		
		Lands owned				
		Reorganization committee		*2,200 00		
		Cash and current assets—page 23		13,114 21		
		Other assets:				
		Materials and supplies				
		Sinking fund				
		Sundries				
		Profit and loss—page 31 (or 33)				
		Grand total		1,255,314 21		

322 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

*The item of $368.73 returned against "receivers St. L., A. & T. R'y in Texas, gen'l acc't," should not be returned against "current liabilities, page 23." The new company assumed the assets & liabilities of the receivers of the old company. All expenses incurred on account of the receivers and all receipts on *on* account of the receivers were charged & credited to "receivers St. L., A. & T. R'y in Texas" and the amount represents the balance in that account June 30th, 1891. This amount is not payable to the receivers and therefore cannot be construed as a liability. It simply represents the excess of receipts over expenses on account of the receivers during the month of June, 1891. It is properly shown as a separate item on page 51.

322 (51) *Comparative General Balance-sheet.*

June 30, 1891.		Liabilities.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
		.....Capital stock—page 17.....	.....	250,000 00		
		.....Funded debt—page 23.....	.....	990,000 00		
		..Current liabilities—page 23..				
		Accrued interest on funded debt not yet payable.	.....	0 00		
		Receivers St. L., A. & T. R'y in Tex. gen'l ac.	.....	*368 73		
		..Profit and loss—page 31 (or 33)..	.....	14,945 48		
		....Grand total.....	.....	1,255,314 21		

322 (58) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1892; the "total number of days worked," and the "total yearly compensation" should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

Class.	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	7	2,191	2,522 52	1 15
General office clerks	2	626	1,800 00	2 88
Station agents	13	4,745	6,247 20	1 32
Other stationmen	16	5,406	7,021 08	1 30
Enginemen	6	2,184	7,724 16	3 54
Firemen	6	2,184	4,466 40	2 05
Conductors	4	1,572	4,829 88	3 07
Other trainmen	7	2,316	4,315 32	1 86
Machinists	2	626	1,672 80	2 67
Carpenters	19	5,947	12,430 44	2 09
Other shopmen	15	4,695	8,720 16	1 85
Section foremen	11	4,015	6,720 00	1 67
Other trackmen	54	16,276	18,987 96	1 17
Switchmen, flagmen, and watchmen	2	730	1,920 00	2 63
Telegraph operators and dispatchers	2	730	960 00	1 31
Employees—account floating equipment	0	0	00	00
All other employees and laborers	7	2,332	4,697 64	1 76
Total (including "general officers")	171	56,575	94,435 56	1 67
Less "general officers"	7	2,191	2,522 52	1 15
Total (excluding "general officers")	164	54,384	91,913 04	1 69
Distribution of above:				
General administration	9	2,817	4,322 52	1 53
Maintenance of way and structures	82	26,248	38,138 40	1 45
Maintenance of equipment	17	5,321	10,392 96	1 95
Conducting transportation	63	24,199	41,581 08	1 87
Total (including "general officers")	171	56,575	94,435 56	1 67
Less "general officers"	7	2,191	2,522 52	1 15
Total (excluding "general officers")	164	54,384	91,913 04	1 69

322 (60) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 60," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The division of "operating expenses" between passenger and freight traffic, as per pages 43 and 45, together with the ton and passenger mileage, give the bases for arriving at the "estimated cost of carrying each passenger one mile," and "estimated cost of carrying one ton one mile." In computing these items, as well as the "average amount received from each passenger," "average receipts per passenger per mile," "passenger earnings per train mile," and the corresponding items called for under "freight traffic," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "dollars," "cents," and "mills."

Make sure that against "total passenger revenue," "total passenger earnings," and similar items under "freight traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "passenger earnings per mile of road," "passenger earnings per train mile," and the corresponding items under "freight traffic," that "total passenger earnings" and "total freight earnings," respectively, are used. In figuring "passenger earnings per mile of road," "freight earnings per mile of road," and the four "per mile of road" items under "passenger and freight," the "total mileage operated" (single track) should in each case be used as returned on page 67 under table "A." In computing "passenger earnings per train mile," add 25 per cent. of "miles run by mixed trains" to the number of "miles run by passenger trains," to obtain the proper divisor; for "freight earnings per train mile," add 75 per cent. of "miles run by mixed trains" to the number of "miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

Each engine in local-freight service is allowed 36 miles per day for switching in addition to the actual mileage between terminals.

322 (61) *Passenger and Freight and Train Mileage.*

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars.	Cts.	Mills.
Passenger traffic:				
Number of passengers carried earning revenue	5,763			
Number of passengers carried one mile	118,970			
Average distance carried	21			
Total passenger revenue—page 35		3,288	39	
Average amount received from each passenger		0	57	060
Average receipts per passenger per mile		0	02	764
Estimated cost of carrying each passenger one mile		0	05	329
Total passenger earnings—page 35		4,016	64	
Passenger earnings per mile of road		45	33	454
Passenger earnings per train mile		0	69	420
Freight traffic:				
Number of tons carried of freight earning revenue	4,806			
Number of tons carried one mile	232,148			
Average distance haul of one ton	48			
Total freight revenue—page 35		4,829	84	
Average amount received for each ton of freight		1	00	496
Average receipts per ton per mile		0	02	081
Estimated cost of carrying one ton one mile		0	03	058
Total freight earnings—page 35		4,829	84	
Freight earnings per mile of road		54	51	287
Freight earnings per train mile		1	00	454
Passenger and freight:				
Passenger and freight revenue—page 35		8,118	23	
Passenger and freight revenue per mile of road		91	62	788
Passenger and freight earnings—page 35		8,846	48	
Passenger and freight earnings per mile of road		99	84	741
Gross earnings from operation—page 35		9,027	86	
Gross earnings from operation per mile of road		101	89	458
Expenses—page 45		13,438	65	
Expenses per mile of road		151	67	776
Train mileage:				
Miles runs by passenger trains	5,786			
Miles run by freight trains	4,878			
Miles run by mixed trains	None.			
Total mileage trains earning revenue	10,594			
Miles run by switching trains	1,944			
Miles run by construction and other trains	3,128			
Grand total train mileage	15,666			
Mileage of loaded freight cars—north or east	22,213			
Mileage of loaded freight cars—south or west	12,784			
Mileage of empty freight cars—north or east	3,619			
Mileage of empty freight cars—south or west	10,912			
Average number of freight cars in train	10.34			
Average number of loaded cars in train	7.32			
Average number of empty cars in train	3.02			
Average number of tons of freight in train	87.38			
Average number of tons of freight in each loaded car	11.92			

322 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the total tonnage carried by each road of the various commodities mentioned, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the form. The object of the second column ("freight originating on this road") is to enable the commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

322 (63) *Freight Traffic Movement.*

(Company's material excluded.)

Commodity.		Freight originating on this road.	Freight received from connecting roads and other carriers.	Total freight tonnage.	
		Whole tons.	Whole tons.	Whole tons.	Per cent.
Products of agriculture.	Grain		108	108	02.26
	Flour		122	122	02.54
	Other mill products		10	10	00.21
	Hay		25	25	00.52
	Tobacco				
	Cotton	4		4	00.08
	Fruit and vegetables				
Products of animals.	Live stock		11	11	00.22
	Dressed meats				
	Other packing-house products		35	35	00.70
	Poultry, game, and fish				
	Wool				
	Hides and leather				
Products of mines.	Anthracite coal				
	Bituminous coal, charcoal	1,249		1,249	26.02
	Coke		24	24	00.48
	Ores				
	Stone, sand, and other like articles				
Products of forest.	Lumber	1,631	135	1,766	36.78
Manufactures.	Petroleum and other oils		16	16	00.32
	Sugar				
	Naval stores				
	Iron—pig and bloom	317		317	06.60
	Iron and steel rails				
	Other castings and machinery	57		57	01.15
	Bar and sheet metal				
	Cement, brick, and lime				
	Agricultural implements		7	7	00.15
	Wagons, carriages, tools, etc		25	25	00.52
	Wines, liquors, and beers				
	Household goods and furniture	4	5	9	00.19
Merchandise		32	154	186	03.88
Miscellaneous—Other commodities not mentioned above		212	623	835	17.38
Total tonnage		3,586	1,300	4,806	100.00

322 (64) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 64," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the equipment owned or leased by the company making the report. Under "cars leased," all cars should be shown which are considered as owned by equipment companies, car trusts, etc., in use by the reporting company; any locomotives that are similarly "leased" should be returned against the latter item as provided for under "locomotives." It is expected that sums paid towards the purchase of equipment (that is, locomotives or cars) upon such contracts will appear in the "general balance-sheet," page 49, as a separate item, under "other assets."

In giving the "kind" of "train brake" and "automatic coupler," be very careful to write clearly and spell correctly the name or names of each style of train brake or automatic coupler in use.

Explanatory Remarks.

322 (65) *Description of Equipment.*

Item.	Number added during year.	Total number at end of year.	Equipment fitted with train brake. Number.	Kind.	Equipment fitted with automatic coupler. Number.	Kind.
Locomotives:						
Passenger		2	2	Westinghouse air		
Freight		4	4	Hand		
Switching		1	1	"		
Leased (see "instructions," page 64)		0	0			
Total locomotives		7	7			
Cars in passenger service:				Westinghouse		Miller.
First-class passenger cars		2	2	Automatic	2	Hook.
Second-class passenger cars		2	2	"	2	"
Combination passenger cars		0				
Emigrant cars		0				
Dining cars		0				
Parlor cars		0				
Sleeping cars		0				
Baggage, express, and postal cars		2	2	"	2	"
Other cars in passenger service		0				
Total		6	6		6	
Cars in freight service:						
Box cars		76	76	Hand	76	Common.
Flat cars		83	83	"	83	"
Stock cars		21	21	"	21	"
Coal cars		0				
Tank cars		0				
Refrigerator cars		0				
Other cars		0				
Total		180	180		180	
Cars in company's service:						
Gravel cars		0				
Derrick cars		0				
Caboose cars		2	2	Hand	2	Common.
Other road cars		1	1	"	1	"
Total		3	3		3	
Cars contributed to fast freight line service		0				
Total cars owned		189				
Cars leased (see "instructions," page 64):						
Grand total cars		189				

322 (68) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 68," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

Renewals of Rails and Ties.

New rails laid during year.			
Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.
Iron	900		
Total iron	900		
Steel	600		
Total steel	900		

New ties laid during year.		
Kind.	Number.	Average price at distributing point.
Cross—oak	5,008	.28
Total	5,008	

Consumption of Fuel by Locomotives.

Locomotives.	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
Passenger		130	2		131	5,786	45.28
Freight		164	2		165	4,808	68.64
Switching		14	1		15	4,140	7.25
Construction		42			42	3,128	26.80
Total		350	5	0	353	17,862	39.52
Average cost at distributing point, at Tyler		4.59	1.85				

323 "EXHIBIT I." (Copy.)

ANNUAL REPORT OF THE TYLER SOUTHEASTERN RAILWAY COMPANY TO THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1892. FILED MARCH 23, 1893. B. G. DUVAL, CLERK, BY D. H. HART, D'Y.

323 (22) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies." "Stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rents Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

See notation on page 18.

323 (23) *Recapitulation of Funded Debt.*

Class of debt.	Amount issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds—page 19	660,000 00	660,000 00	26,400 00	*
Miscellaneous obligations—page 21	0 00	0 00	0 00	0 00
Income bonds—page 19	330,000 00	330,000 00	0 00	0 00
Total	990,000 00	990,000 00	26,400 00	0 00

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal.		Interest.		Rate.
			Amount paid during year.	Amount funded or otherwise disposed of.	Amount accrued during year.	Amount paid during year.	
None							
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1902.	
Cash	0 00	Receiver's certificates	0 00
Bills receivable	0 00	Loans and bills payable	0 00
Due from agents	0 00	Audited vouchers and accounts	52,113 20
Net traffic balances due from other companies	0 00	Wages and salaries	0 00
Due from solvent companies and individuals	0 00	Net traffic balances due to other companies	0 00
Other cash assets (excluding "materials and supplies")*	0 00	Dividends not called for	0 00
		Matured interest coupons unpaid (including coupons due July 1)	0 00
		Rents due July 1	0 00
		Miscellaneous	0 00
Balance—current liabilities	52,113 20	Balance—cash assets	
Total	52,113 20	Total	52,113 20

*Materials and supplies on hand, $ None. (See general balance-sheet—page 19.)

323 (28) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 28," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1892," there should be entered the amounts returned as "total cost to June 30, 1891," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

* When the property was purchased by this company no division or apportionment was made as between the cost of road, cost of equipment, or the value of franchises. For that reason we find it impossible to apportion the amounts to the various accounts under head of "construction." The amounts shown for the various classes of "equipment" are based on the estimated cost of the equipment.

323 (29) *Cost of Road, Equipment, and Permanent Improvements.*

Item.	Expenditures during year.			Total cost to June 30, 1891.	Total cost to June 30, 1892.	Cost per mile.
	Included in operating expenses.	Not included in operating expenses.				
		Charged to income account as permanent improvements.	Charged to construction or equipment.			
Construction:						
Right of way						
Other real estate						
Fences						
Grading and bridge and culvert masonry						
Bridges and trestles						
Rails						
Ties						
Other superstructure						
Buildings, furniture and fixtures						
Shop machinery and tools						
Engineering expenses						
Interest during construction						
Discount on securities sold for construction						
Telegraph line						
Wharfing, etc						
Sidings and yard extensions						
Terminal facilities and elevators						
Road built by contract						
Purchase of constructed road						
Other items						
Total construction	0 00	0 00	188 00	$1,139,283 00	$1,139,471 00	12,827 00
Equipment:						
Locomotives			0 00	24,500 00	24,500 00	
Passenger cars			0 00	12,525 00	12,525 00	
Sleeping, parlor and dining cars			0 00	0 00	0 00	
Baggage, express and postal cars			0 00	5,960 00	5,960 00	
Combination cars			0 00	0 00	0 00	
Freight cars			4,216 86	60,732 00	64,948 86	
Other cars of all classes			0 00	0 00	0 00	
Floating equipment			0 00	0 00	0 00	
Total equipment	0 00	0 00	4,216 86	103,717 00	107,933 86	1,218 21
Grand total cost construction, equipment, etc	0 00	0 00	4,405 76	1,240,000 00	1,244,405 76	14,045 21

323 (30) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 30," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified in any of the captions under "deductions from income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1891, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable; an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks.

Additions for year:	
Receiver's operating expenses, less receiver's earnings, included in current expenses & earnings during year ending June 30, 1892	3,100 50
Surplus funds received from reorganization committee	513 54
	3,614 04
Deductions for year:	
Sundry reorganization expenses	98 53

323 (31) Copy.

Income Account.

(For roads making operating reports.)

Gross earnings from operation—page 35	133,060 74	
Less operating expenses—page 45	166,922 79	
Income from operation		
Deficit		33,862 05
Dividends on stocks owned—page 37	0 00	
Interest on bonds owned—page 39	605 00	
Miscellaneous income, less expenses—page 41	0 00	
Income from other sources		605 00
Total income		
Deficit		33,257 05
Deductions from income:		
Interest on funded debt accrued—page 23	26,400 00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	93 00	
Rents—page 47, A	0 00	
Taxes	4,477 86	
Permanent improvements—page 29	0 00	
Other deductions	0 00	
Total deductions from income		30,970 86
Net income		
Deficit		64,227 91
Dividends, — per cent., common stock	0 00	
Dividends, — per cent., preferred stock	0 00	
Other payments from net income	0 00	
Total		0 00
Surplus from operations of year ending June 30, 1892		
Deficit from operations of year ending June 30, 1892		64,227 91
Surplus on June 30, 1891 (from "general balance-sheet," 1891 report)		14,945 48
Deficit on June 30, 1891 (from "general balance-sheet," 1891 report)		
Additions for year		3,614 04
Deductions for year		98 53
Surplus on June 30, 1892 (for entry on "general balance-sheet," page 51)		
Deficit on June 30, 1892 (for entry on "general balance-sheet," page 49)		45,766 92

323 (34) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 31," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

See operating expenses, page 43.

323 (35) *Earnings from Operation.*

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	40,436 50		
Less repayments:			
Tickets redeemed		0 00	
Excess fares refunded		1 67	
Other repayments		1 75	
Total deductions		3 42	
Total passenger revenue			40,433 08
Mail			5,468 12
Express			3,294 65
Extra baggage and storage			372 40
Other items			0 00
Total passenger earnings			49,528 25
Freight:			
Freight revenue	100,441 88		
Less repayments:			
Overcharge to shippers		1,237 51	
Other repayments		17,935 25	
Total deductions		19,172 76	
Total freight revenue			81,269 12
Stock yards			0 00
Elevators			0 00
Other items			0 00
Total freight earnings			81,269 12
Total passenger and freight earnings			130,797 37
Other earnings from operations:			
Car mileage—balance			
Switching charges—balance			0 00
Telegraph companies			598 95
Rents from tracks, yards, and terminals—page 41			0 00
Rents not otherwise provided for			0 00
Other sources			1,664 42
Total other earnings			2,263 37
Total gross earnings from operation			133,060 74

323 (42) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page; as for example, "see page 42," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

323 (43) *Operating Expenses.*

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	11,165 15	11,120 55	22,285 70
2. Renewals of rails	1,398 24	1,392 66	2,790 90
3. Renewals of ties	8,422 50	8,388 87	16,811 37
4. Repairs of bridges and culverts	9,584 15	9,545 88	19,130 03
5. Repairs of fences, road crossings, signs, and cattle-guards	691 87	689 12	1,380 99
6. Repairs of buildings	1,079 96	1,012 84	2,092 80
7. Repairs of docks and wharves	0 00	0 00	0 00
8. Repairs of telegraph	28 50	28 38	56 88
9. Other expenses	198 93	198 13	397 06
Total	32,569 30	32,376 43	64,945 73
Maintenance of equipment:			
10. Repairs and renewals of locomotives	2,624 79	2,614 31	5,239 10
11. Repairs and renewals of passenger cars	3,425 18	0 00	3,425 18
12. Repairs and renewals of freight cars	0 00	11,933 79	11,933 79
13. Repairs and renewals of ferry-boats, tugs, floats, and barges	0 00	0 00	0 00
14. Shop machinery, tools, etc	835 08	829 76	1,664 84
15. Other expenses	719 33	716 48	1,435 81
Total	7,602 38	16,094 34	23,696 72
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	4,132 54	7,180 84	11,313 38
17. Fuel for locomotives	3,840 12	8,643 71	12,483 83
18. Water supply for locomotives	465 84	493 86	959 70
19. All other supplies for locomotives	382 03	390 46	782 49
20. Wages of other trainmen	2,100 42	6,204 64	8,305 06
21. All other train supplies	1,223 99	1,017 31	2,241 30
22. Wages of switchmen, flagmen, and watchmen	544 79	3,296 04	3,840 83
23. Expense of telegraph, including train-dispatchers and operators	849 51	3,002 83	3,852 34
24. Wages of station agents, clerks, and laborers	3,574 66	12,605 70	16,180 66
25. Station supplies	84 88	291 43	376 31
26. Switching charges—balance	0 00	0 00	0 00
27. Car mileage—balance	*51 44	*82 06	*133 50
28. Loss and damage	611 94	753 55	1,365 52
29. Injuries to persons	975 06	158 34	1,133 40
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies	0 00	0 00	0 00
31. Other expenses	174 51	317 74	492 25
Total	18,949 15	44,274 42	63,223 57

[* In red ink in copy.]

323 (44) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 44," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 42.

Explanatory Remarks.

323 (45) *Operating Expenses*—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	2,433 89	2,847 78	5,281 67
33. Salaries of clerks	778 17	775 06	1,553 23
34. General office expenses and supplies	1,285 45	1,280 32	2,565 77
35. Agencies, including salaries and rent	671 18	1,070 99	1,742 17
36. Advertising	492 78	28 98	521 76
37. Commissions	30 20	0 00	30 20
38. Insurance	280 62	532 34	812 96
39. Expense of fast-freight lines	0 00	0 00	0 00
40. Expense of traffic associations	0 00	0 00	0 00
41. Expense of stock yards and elevators	0 00	0 00	0 00
42. Rents for tracks, yards, and terminals—page 47 B	0 00	0 00	0 00
43. Rents not otherwise provided for	139 25	138 70	277 95
44. Legal expenses	488 41	466 47	974 88
45. Stationery and printing	542 90	744 33	1,287 23
46. Other general expenses	4 48	4 47	8 95
Total	7,147 33	7,909 44	15,056 77
Recapitulation of expenses:			
47. Maintenance of way and structures	32,569 30	32,376 43	64,945 73
48. Maintenance of equipment	7,992 38	16,094 34	25,086 72
49. Conducting transportation	18,949 15	44,274 42	63,223 57
50. General expenses	7,147 33	7,909 44	15,056 77
Grand total	66,288 16	100,654 63	166,922 79
Percentage of operating expenses to earnings			125.45

323 (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1891, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1892, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease" in the account specified.

"Cash and current assets," page 49, and "current liabilities," page 51, should each be given as a total and not as a balance, corresponding to data returned in the lower table on page 23.

If there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

323 (49) *Comparative General Balance-sheet.*

June 30, 1891. Item.	June 30, 1891. Total.	Assets.	June 30, 1892. Item.	June 30, 1892. Total.	Year ending June 30, 1892. Increase.	Year ending June 30, 1892. Decrease.
	1,136,283 00	Cost of road—page 29		1,136,471 90	188 90	
	103,717 00	Cost of equipment—page 29		107,934 86	4,216 86	
	0 00	Stocks owned—page 37		0 00		
	0 00	Bonds owned—page 39		0 00		
	0 00	Other permanent investments		0 00		
		Insurance ac. premium		81 25	81 25	
	0 00	Lands owned		0 00		
	2,200 00	Reorganization committee		0 00		2,200 00
		R. c'd St. L., A. & T. R'y in Tex. gen'l ac		2,731 77	2,731 77	
	13,114 21	Cash and current assets—page 23				13,114 21
		Other assets:				
	0 00	Materials and supplies		0 00		
	0 00	Sinking fund		0 00		
	0 00	Sundries		0 00		
	0 00	Profit and loss—page 31 (or 33)		45,766 92	45,766 92	
	1,255,314 21	Grand total		1,292,085 70	54,985 70	15,314 21

323 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

323 (51) *Comparative General Balance-sheet.*

June 30, 1891.		Liabilities.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
	250,000 00	Capital stock—page 17		250,000 00		
	990,000 00	Funded debt—page 23		990,000 00		
	0 00	Current liabilities—page 23		52,113 20	52,113 20	
	0 00	Accrued interest on funded debt not yet payable		0 00		
	368 73	Rec'd St. L., A. & T. R'y in Tex. gen'l ac.				368 73
	0 00	Donated town-lot sale		872 50	872 50	
	14,945 48	Profit and loss—page 31 (or 33)		0 00		14,945 48
	1,255,314 21	Grand total		1,292,985 70	52,985 70	15,314 21

323 (58) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1892; the "total number of days worked," and the "total yearly compensation" should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

323 (59) Copy.

Employees and Salaries.

Class.	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	11	275	2,559 97	9 31
General office clerks	10	250	758 40	3 03
Station agents	12	4,380	5,591 40	1 28
Other stationmen	18	5,891	7,004 40	1 19
Enginemen	7	2,484	7,506 48	3 02
Firemen	7	2,496	4,356 00	1 75
Conductors	4	1,509	4,599 72	3 05
Other trainmen	8	2,850	4,151 64	1 46
Machinists	1	373	1,119 00	3 00
Carpenters	19	6,987	16,088 28	2 30
Other shopmen	7	2,184	5,287 80	2 42
Section foremen	10	3,650	6,120 00	1 68
Other trackmen	57	17,842	21,081 12	1 19
Switchmen, flagmen, and watchmen	3	1,095	2,292 00	2 09
Telegraph operators and dispatchers	2	730	1,320 00	1 81
Employees—account floating equipment	0	0	0 00	0 00
All other employees and laborers	11	4,088	5,800 44	1 42
Total (including "general officers")	185	57,074	95,637 25	1 68
Less "general officers"	11	275	2,559 97	9 31
Total (excluding "general officers")	174	56,799	93,077 28	1 64
Distribution of above:				
General administration	21	525	3,318 37	6 21
Maintenance of way and structures	86	28,469	43,289 40	1 52
Maintenance of equipment	8	2,557	6,407 40	2 51
Conducting transportation	70	25,523	42,622 08	1 67
Total (including "general officers")	185	57,074	95,637 25	1 68
Less "general officers"	11	275	2,559 97	9 31
Total (excluding "general officers")	174	56,799	93,077 28	1 64

323 (60) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 60," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The division of "operating expenses" between passenger and freight traffic, as per pages 43 and 45, together with the ton and passenger mileage, give the bases for arriving at the "estimated cost of carrying each passenger one mile," and "estimated cost of carrying one ton one mile." In computing these items, as well as the "average amount received from each passenger," "average receipts per passenger per mile," "passenger earnings per train mile," and the corresponding items called for under "freight traffic," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "dollars," "cents," and "mills."

Make sure that against "total passenger revenue," "total passenger earnings," and similar items under "freight traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "passenger earnings per mile of road," "passenger earnings per train mile," and the corresponding items under "freight traffic," that "total passenger earnings" and "total freight earnings," respectively, are used. In figuring "passenger earnings per mile of road," "freight earnings per mile of road," and the four "per mile of road" items under "passenger and freight," the "total mileage operated" (single track) should in each case be used as returned on page 67 under table "A." In computing "passenger earnings per train mile," add 25 per cent. of "miles run by mixed trains" to the number of "miles run by passenger trains," to obtain the proper divisor; for "freight earnings per train mile," add 75 per cent. of "miles run by mixed trains" to the number of "miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

Each engine in local-freight service is allowed 36 miles per day for switching in addition to the actual mileage between terminals.

323 (61) *Passenger and Freight and Train Mileage.*

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars	Cts.	Mills.
Passenger traffic:				
Number of passengers carried earning revenue	68,551			
Number of passengers carried one mile	1,469,769			
Average distance carried	21			
Total passenger revenue—page 35		40,433	08	
Average amount received from each passenger		0	58	982
Average receipts per passenger per mile		0	02	789
Estimated cost of carrying each passenger one mile			4	571
Total passenger earnings—page 35		40,528	25	
Passenger earnings per mile of road		559	00	959
Passenger earnings per train mile			75	285
Freight traffic:				
Number of tons carried of freight earning revenue	82,650			
Number of tons carried one mile	4,319,787			
Average distance haul of one ton	52			
Total freight revenue—page 35		81,269	14	
Average amount received for each ton of freight		0	98	929
Average receipts per ton per mile		0	01	881
Estimated cost of carrying one ton one mile		0	02	330
Total freight earnings—page 35		81,269	14	
Freight earnings per mile of road		917	25	869
Freight earnings per train mile		1	24	240
Passenger and freight:				
Passenger and freight revenue—page 35		121,702	20	
Passenger and freight revenue per mile of road		1,373	64	4 0
Passenger and freight earnings—page 35		130,797	37	
Passenger and freight earnings per mile of road		1,476	25	828
Gross earnings from operation—page 35		133,060	74	
Gross earnings from operation per mile of road		1,501	81	422
Expenses—page 45		166,922	79	
Expenses per mile of road		1,884	00	140
Train mileage:				
Miles run by passenger trains	65,788			
Miles run by freight trains	65,413			
Miles run by mixed trains	None.			
Total mileage trains earning revenue	131,201			
Miles run by switching trains	24,436			
Miles run by construction and other trains	11,663			
Grand total train mileage	167,300			
Mileage of loaded freight cars—north or east	330,604			
Mileage of loaded freight cars—south or west	214,807			
Mileage of empty freight cars—north or east	51,807			
Mileage of empty freight cars—south or west	177,559			
Average number of freight cars in train	14.85			
Average number of loaded cars in train	8.34			
Average number of empty cars in train	3.51			
Average number of tons of freight in train	94.03			
Average number of tons of freight in each loaded car	11.17			

323 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the total tonnage carried by each road of the various commodities mentioned, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the form. The object of the second column ("freight originating on this road") is to enable the commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

323 (63) *Freight Traffic Movement.*

(Company's material excluded.)

Commodity		Freight originating on this road.	Freight received from connecting roads and other carriers.	Total freight tonnage,	
		Whole tons.	Whole tons.	Whole tons.	Per cent.
Products of agriculture.	Grain		1,201	1,201	01.45
	Flour	144	1,539	1,683	02.04
	Other mill products		134	134	00.16
	Hay		558	558	00.68
	Tobacco		4	4	00.01
	Cotton	2,650		2,650	03.21
	Fruit and vegetables	53	92	145	00.15
	Cotton-seed products	821		821	00.99
Products of animals.	Live stock	6	36	42	00.5
	Dressed meats				
	Other packing-house products	44	573	617	00.75
	Poultry, game, and fish				
	Wool				
	Hides and leather				
Products of mines.	Anthracite coal				
	Bituminous coal		459	459	00.56
	Coke				
	Ores				
	Stone, sand, and other like articles				
	Salt		226	226	00.27
Products of forest.	Lumber	30,878	8,736	39,614	47.93
	Charcoal	11,779		11,779	14.25
Manufactures.	Petroleum and other oils		329	329	00.40
	Sugar		79	79	00.10
	Naval stores				
	Iron—pig and bloom	5,806		5,806	07.02
	Iron and steel rails				
	Other castings and machinery	726		726	00.87
	Bar and sheet metal				
	Cement, brick, and lime				
	Agricultural implements		40	40	00.06
	Wagons, carriages, tools, etc.		196	196	00.23
	Wines, liquors, and beers		111	111	00.14
	Household goods and furniture	141	44	185	00.22
Merchandise		1,041	1,485	2,526	03.06
Miscellaneous—Other commodities not mentioned above		11,516	1,114	12,730	15.40
Total tonnage		65,085	16,965	82,650	100.00

323 (64) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 64," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the equipment owned or leased by the company making the report. Under "cars leased," all cars should be shown which are considered as owned by equipment companies, car trusts, etc., in use by the reporting company; any locomotives that are similarly "leased" should be returned against the latter item as provided for under "locomotives." It is expected that sums paid towards the purchase of equipment (that is, locomotives or cars) upon such contracts will appear in the "general balance-sheet," page 49, as a separate item, under "other assets."

In giving the "kind" of "train brake" and "automatic coupler," be very careful to write clearly and spell correctly the name or names of each style of train brake or automatic coupler in use.

Explanatory Remarks.

323 (65) *Description of Equipment.*

Item	Number added during year.	Total number at end of year.	Equipment fitted with train brake. Number.	Equipment fitted with train brake. Kind.	Equipment fitted with automatic coupler. Number.	Equipment fitted with automatic coupler. Kind.
Locomotives:						
Passenger		3	3	Westinghouse air		
Freight		7	0			
Switching		1	0			
Leased (see "instructions," page 64)						
Total locomotives		11	3		None	
Cars in passenger service:						
First-class passenger cars		2	2	Westinghouse air	2	Miller hook.
Second-class passenger cars		2	2	do	2	Do.
Combination passenger cars		0				
Emigrant cars		0				
Dining cars		0				
Parlor cars		0				
Sleeping cars		0				
Baggage, express, and postal cars		2	2	do	2	Do.
Other cars in passenger service		0				
Total		6	6		6	
Cars in freight service:						
Box cars	21	91				
Flat cars	36	118				
Stock cars		8				
Coal cars						
Tank cars						
Refrigerator cars						
Other cars						
Total	57	217	None		None	
Cars in company's service:						
Gravel cars		2				
Derrick cars						
Caboose cars		2				
Other road cars		8				
Total		12	None		None	
Cars contributed to fast freight-line service		0				
Total cars owned		235				
Cars leased (see "instructions," page 64)		0				
Grand total cars		235				

323 (68) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 68," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

Renewals of Rails and Ties.

New rails laid during year.				New ties laid during year.		
Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.	Kind.	Number.	Average price at distributing point.
Iron—None				Oak	59,104	.28
Total iron						
Steel	275	35 lbs.	25.00	Total	59,104	.28
Total steel	275	35 lbs.	25.00			

Consumption of Fuel by Locomotives.

Locomotives.	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
Passenger		1,203	27		1,221	66,020	36.99
Freight		2,416	48		2,418	66,887	74.20
Switching		276	12		284	44,980	12.63
Construction		170	15		180	11,663	15.44
Total	None.	4,065	102	None.	4,133	189,550	43.61
Average cost at distributing point, at Tyler		4.50	2.00				

Endorsed on cover: Case No. 15,553. W. Texas C. C. U. S. Term No., 1169. John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, appellants, *vs.* The Mercantile Trust Company, trustee, and The Tyler Southeastern Railway Company. Filed March 31st, 1894.

Office Supreme Court U. S.
FILED.
APR 13 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 1169.

JOHN H. REAGAN ET AL., APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY AND THE TYLER SOUTHEASTERN RAILROAD COMPANY APPELLEE.

APPEAL FROM THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANTS.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
For Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

No. 1169.

JOHN H. REAGAN ET AL., APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY AND THE TYLER SOUTHEASTERN RAILROAD COMPANY APPELLEE.

STATEMENT OF THE CASE.

This case in all essential features is similar to the *International*. The difference consists in the fact that the act of February 7, 1853, is not involved in this case, and it is alleged that the company did not earn operating expenses under the commission rates.

I.

We beg to refer to what general observations are made in the brief in the *Santa Fé* and *Cotton Belt* cases on the subject of rates. As in the *Cotton Belt* case, so in this, though operating expenses were not earned under the commission rates, they were not earned under rates established by the company. But under the commission rates there was a remarkable increase in earnings. The gross earnings for the

year 1891 were only $9,027.86, while for the year 1892 they were $133,060.74. The freight earnings for 1891 were $4,830.29, and for 1892 $100,441.88, or an increase under the commission rates of $95,610.59. What is said in the *Cotton Belt* case as to the increase of operating expenses for 1892 is equally applicable here. This road, as that one, is a reorganized insolvent concern, and was in a deplorable physical condition.

It is submitted that the cause should be reversed with directions to dismiss the bills.

C. A. Culberson,
H. C. Coke,
W. S. Simkins,
For Appellants.

Office Supreme Court U. S.
FILED.
APR 13 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.—No. 1169.

JOHN H. REAGAN ET AL.,
Appellants,

vs.

THE MERCANTILE TRUST COMPANY AND THE TYLER SOUTHEASTERN RAILWAY COMPANY,
Appellees.

BRIEFS FOR THE TRUST COMPANY AND FOR THE RAILWAY COMPANY, APPELLEES.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JOHN J. McCOOK,
Of Counsel for The Mercantile Trust Company.

ALEXANDER G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel for The Tyler Southeastern Railway Company.

C. G. Burgoyne, cor. Walker and Centre Sts., N. Y.

In the Supreme Court of the United States.

OCTOBER TERM, 1893—No. 1169.

JOHN H. REAGAN ET AL.,
Appellants,

AGAINST

THE MERCANTILE TRUST COMPANY and THE TYLER SOUTHEASTERN RAILWAY COMPANY,
Appellees.

Statement and Brief.*

The bill of complaint in this cause was filed in the United States Circuit Court for the Western Distri . of Texas, on the same day as the bill of complaint of The Farmers' Loan and Trust Company, which forms the subject matter of suit No. 928 of this Term. The proceedings in this cause are exact duplicates of and were conducted *pari passu* with those in cause No. 928, and we therefore dispense with any statement of the case, except a brief synopsis of the facts as to the cost of the railways of the defendant company, its indebtedness and the effect of the tariffs upon it in dollars and

* Under the order requiring this brief to be filed by April 13th, it is necessary to file it before the record is printed. We have, therefore, been compelled to refer to the record otherwise than by page. We trust, and believe, that this will not be found to be a source of much inconvenience to the Court.

cents, wherein alone it differs from the cause referred to, and which we give as follows:

SPECIAL FACTS IN THIS CASE.

1. The defendant company **owns** ninety miles of road, fully described in its bill of complaint (Bill of Complaint, p. 3).

2. The **cost** of the construction and equipment of the lines of railroad owned and operated by the defendant company was $14,000 per mile (Amendment to Bill of Complaint, p. 1).

3. The **cost of replacement or duplication** of the lines of railroad and equipment of the defendant company would be not less than $13,000 per mile *(Ib.)*

4. The **bonded indebtedness** of the defendant company aggregates $990,000, or $11,000 per mile of road owned and operated by it, and this indebtedness bears interest at the rate of four per cent. per annum. The stock issued by the defendant railroad company, and outstanding, amounts to $250,000, or at the rate of $2,777+ per mile of road owned and operated by it. The stock and bonds of the company aggregate $1,240,000, or at the rate of $13,777+ per mile of road owned and operated by it (Bill of Complaint, pp. 3, 4; Cross-bill, pp. 1, 2).

It thus appears that the entire capitalization of the railroad company—stock and bonds—are outstanding at an amount substantially equal to the cost of replacement or reproduction of the mere physical railroad and equipment of the defendant company, and that

the capitalization of the defendant company is a little less than the actual cash expended in the construction and equipment of its lines of railway.

5. **The operating expenses** of the defendant company were, at the time when the Railroad Commission began its work, reduced to a minimum consistent with safety and with adequate service to the company and the public. Its supplies, material and property for the operation of its road were secured at the cheapest market price, and in amount no more than actually necessary for the purposes of operation. Its operating expenses are shown with absolute exactitude and in complete detail. The number of its officers, employees and laborers, and the number of days which they had worked, their total yearly compensation, and their average daily compensation distributively and in the aggregate are also shown. By allegations, the truth of which is conceded, and by exhibits and schedules whose accuracy is admitted, it is shown that the operating expenses of the railroad are at a minimum consistent with safety and adequate service (Amendment to bill of complaint, par. 1, Exhibit H and I).

6. **The revenues of the railway company** for the ten months ending March 31st, 1892, from all sources amounted to $115,628.56. Its operating expenses, taxes and other disbursements, without allowing anything for interest on bonds, amounted to $155,110.55, thus showing *a deficit in actual operating expenses of the sum of $39,481.99* (see paragraph 2 of cross-bill from which the above figures are taken, omitting the figures there given for interest on bonds; see also original bill, p. 9).

With the actual cash investment in its property in

excess of its bond and stock capitalization, with these bonds bearing only two-thirds the minimum rate of interest established by the laws of Texas (as lately amended and reducing the legal rate to 6%); with its road operated as economically as it was possibe and safe consistently with public interest; with its earnings absolutely insufficient to pay its operating expenses; with its rates forced by actual commercial and competitive conditions to an abnormally low and unproductive basis; with the interest upon its securities in default—with these as the existing conditions the Railroad Commission *began* its work of reduction of rates and it *completed* its work at the date of the preliminary injunction with reductions resulting in the dimunition of net revenues at the rate of $18,000 per annum as compared with the result of the inadequate and insufficient rates which were in existence at the time when the commission began. While the net revenues were then below the line of the railway company's operating expenses the reductions effected by the commission cut off its revenues derived from freight to the extent of very nearly 25 per cent. (Amendment to original bill, p. 1).

A statement of the facts of this case is its most cogent and conclusive argument.

Unless a railway company is under obligations to perform a service to the public at less than cost, the decree of the lower court is correct and should be affirmed and we submit the case accordingly.

JOHN F. DILLON,
JOHN J. MCCOOK,
E. B. KRUTTSCHNITT,
Of counsel for the Trust Company, Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893—No. 1169.

JOHN H. REAGAN ET AL.,
Appellants,

AGAINST

THE MERCATILE TRUST COMPANY, Trustee, and THE TYLER SOUTHEASTERN RAILWAY COMPANY,
Appellees.

This cause is submitted to the Court upon the briefs and arguments filed in cause No. 928 of this Term, by us and by counsel for The Mercantile Trust Company, and also upon the short statement and brief filed by counsel for the Trust company in this cause.

ALEXANDER G. COCHRAN,
WINSLOW S. PIERCE,
Counsel for the Railway Company, Cross-Complainant and Appellee.

Office Supreme Court U. S.
FILED.
APR 27 1894
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

October Term, 1893.

No. 1169.

JOHN H. REAGAN ET ALS., APPELLANTS,

versus

THE MERCANTILE TRUST COMPANY AND THE TYLER, SOUTHEASTERN RAILWAY COMPANY,
APPELLEES.

REPLY BRIEF FOR APPELLEES.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JNO. J. McCOOK,
Of Counsel for Trust Company.
ALEXANDER G. COCHRANE,
WINSLOW S. PIERCE,
Of Counsel for Railway Company.

T. H. Thomason, Print, N. O.

SUPREME COURT OF THE UNITED STATES.

October Term, 1893.

No. 1169.

JOHN H. REAGAN ET ALS., APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY AND THE TYLER, SOUTHEASTERN RAILWAY COMPANY, APPELLEES.

REPLY BRIEF FOR APPELLEES.

In reply to the comments of the Attorney-General on the alleged increase in the earnings of the defendant Railway Company for the year 1892, as compared with 1891, we beg to call the attention of the Court to two matters which are conclusive, to-wit:

1st. If the appellants desired to raise questions of fact, they should not have asked leave to withdraw their answers, but should have allowed the case to come before the Court upon proofs. They elected to demur and they stood upon their demurrer. Both the bill and the amended bill, and the cross-bill and the amended cross-bill specifically alleged that the effect of the commission rates was a depletion of revenues, and that depletion is given in dollars and cents. If there had been any such increase in the revenues

as the Attorney-General claims, in his brief, the complainant would have a right by appropriate evidence to explain that increase, and to show that it is perfectly consistent with the allegations of the bill that the commission rates depleted the earnings. By their demurrer appellants admitted the confiscatory character of the tariff and justified. It is now too late to shift their defense.

2d. Owing to the fact that the appeal in this cause was made returnable only on April 24, and that it was considered desirable that this cause, together with four others of the same class, should go before the Court at one and the same time, it became necessary to print the records very hurriedly, and the counsel writing this brief has not even one of the printed records before him, but is compelled to trust to memory. He knows, however, the fact to be, and ventures the suggestion, that the same documents from which the Attorney-General takes his figures will show that the report for the year 1891, covered the one month of June only, when the Railway had just emerged from a receivership (see original bill, first three lines of paragraph nine), whilst the report for the year 1892 covered twelve months. The comparison in the brief of the appellants is therefore made between revenues of one month of 1891, and revenues of twelve months of 1892.

Respectfully submitted,

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JNO. J. McCOOK,
Of Counsel for Trust Company.
ALEXANDER G. COCHRANE,
WINSLOW S. PIERCE,
Of Counsel for Railway Company.

154 US 420

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. 1170.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

vs.

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE, AND THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED MARCH 31, 1894.

(15,554.)

(15,554.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1170.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

vs.

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE, AND THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Original bill of complaint	2	3
Exhibit "A"—Act to establish railroad commission (omitted in printing)	87	—
B No. 1—Statement of earnings, &c. (omitted in printing)	98	—
B No. 2—Statement of earnings, &c. (omitted in printing)	123	—
C and D—Statement of earnings, &c. (omitted in printing)	145	—
"E"—Statement of earnings, &c. (omitted in printing)	177	—
"G"—Tariffs and circulars of railroad commission (omitted in printing)	183	—
"G"—Tariffs and circulars of railroad commission, part III (omitted in printing)	325	—

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 6, 1894.

	Original.	Print.
Answer of railway company to the bill of complaint	342	81
Motion for leave to file cross-bill and order granting same	345	83
Cross-bill of the Gulf, Colorado and Santa Fe Railway Company	346	84
Complainants' amended bill of complaint	363	95
Amendment to cross-bill of the Gulf, Colorado and Santa Fe Railway Company	369	98
Motion of defendants to withdraw answers and file demurrer	376	102
Order granting leave to withdraw answers and file demurrer	377	103
Rule setting down cause for hearing on bill and answer	380	105
Demurrer of John H. Reagan *et al.*	381	105
Demurrer of John H. Reagan *et al.* to cross-bill	387	108
Rule filing amended bill of complaint (omitted in printing)	389	—
Rule filing amended cross-bill (omitted in printing)	390	—
Rule filing demurrer to bill of complaint (omitted in printing)	391	—
Rule filing demurrer to cross-bill (omitted in printing)	392	—
Rule setting down demurrer to bill of complaint for argument (omitted in printing)	393	—
Rule setting down demurrer to cross-bill for argument (omitted in printing)	394	—
Rule on defendants declining to further answer bill and cross-bill and submitting cause for final decree (omitted in printing)	395	—
Final decree	396	110
Opinion (omitted in printing)	400	—
Assignments of error	428	112
Application for appeal and order granting same	429	113
Bond on appeal	430	114
Waiver of issuance of citation	431	115
Citation to Farmers' Loan and Trust Company	432	115
Certificate of clerk	433	116
Stipulation to omit parts of record in printing	434	117
Exhibit H—Annual report for 1891 (parts omitted in printing)	437	118
I—Annual report for 1892 (parts omitted in printing)	438	140

a Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court of fifth circuit and western district of Texas, at the city of Austin in said circuit and district, on the 6th day of February, 1893, it being the first Monday in February and the day fixed by law for commencing a regular term of said court at said place.

Present: The Honorable Andrew P. McCormick, one of the circuit judges of the United States for the fifth circuit; A. J. Evans, United States attorney for said district; Paul Fricke, United States marshal for said district, and B. G. Duval, clerk of said court.

When and where the following proceedings were had, to wit:

In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit. In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO, AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants.

1 No. 190. Equity.

In the United States Circuit Court for the Western District of Texas, in the Fifth Circuit. In Equity.

No. 190.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO, AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants.

Bill of Complaint.

Farrar, Jonas & Kruttschnitt, 33 Carondelet street, New Orleans, La.; Turner, McClure & Ralston, 22 William street, New York city, and West & McGown, Austin, Tex., complainant's solicitors.

H. B. Burner, John J. McCook, John F. Dillon, E. B. Kruttschnitt, of counsel.

Filed April 30, '92.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

1—1170

1½

Index to Insertions.

	PAGES.
Charter of Gulf, Colorado & Santa Fe Railway Co.....	4 to 7
Legislative Amendment Thereto.	9 " 10
G. C. & S. F. First Mortgage.....	10 " 15
G. C. & S. F. Supplement to First Mortgage.....	15 " 21
G. C. & S. F. Second Mortgage.	22 " 29
Statement Showing Result of Operation of G. C. & S. F. for Five Years.....	31
Commission's Notice of Rate Making, Commencing July 6th, 1891.....	32
Commission's Proposed Commodity Tariff No. 1.....	35 " 36
" " " " " 2.....	37 " 38
" " " " " 3.....	38
" Commodity Tariff No. 1.....	40 " 42
" " " " 2.....	43 " 44
" " " " 3.....	46 " 47
" " " " 4.....	49 " 50
" " " " 5.....	51 " 52
" " " " 6.....	53 " 55
" " " " 8.....	57 " 59
" " " " 9.....	60 " 61
" Circular No. 7, Amending Com. Tariff No. 2 .	48
" " " 10, " " " " 3 .	64 " 65
" " " 11, " " " " 1 .	65 " 66
" " " 12, " " " " 4 .	68
" " " 19, " " " " 6 .	66 " 67
" " " 23, " " " " 6 .	62 " 64
" " " 25, " " " " 6 .	55 " 56
" " " 34, Regulating handling of Loaded Cars, etc.....	68

2 *To the Judges of the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit, sitting in Equity:*

The Farmers' Loan and Trust Company, a corporation duly created by and under the laws of the State of New York, and a citizen of the said State, having its principal office and place of business in the city of New York, exhibits this, its bill of complaint against the Gulf, Colorado & Santa Fe Railway Company, for convenience hereinafter called the Gulf Company, Jno. H. Reagan, William P. McLean, L. L. Foster and Chas. A. Culberson, and whereupon your orator complains and alleges, making the allegations hereof, except those the knowledge of which is personal to itself, on its information and belief.

II. Your orator is a corporation, duly organized and existing under the laws of the State of New York, and as such corporation is fully authorized and empowered to receive and hold in trust the lands, railroads, franchises and other property conveyed to it in trust, as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter set forth.

That the Gulf Company is a body politic and corporate, incorporated and existing under and by virtue of an act of the Legislature of the State of Texas, passed May 28, 1873, and a citizen of the State of Texas and an inhabitant of the Western Judicial District of the United States for the State of Texas; that the said Chas A. Culberson is a resident and inhabitant of the said County of Travis, in the said western district, and is the attorney-general of the State of Texas, and a citizen of said State; that the said Reagan, Foster and McLean constitute the Railroad Commission of Texas, having been appointed and qualified under an act of the Legislature of the State of Texas, entitled "An act to establish a Railroad Commission for the State of Texas," etc., approved April 3, 1891, and have been since on or about the 10th day of June, 1891, acting as said Railroad Commission, hereafter called the Commission or said Com-

3 mission, under and by virtue of the provisions of the said act, and since said June 10, 1891, the said Reagan Foster and McLean have been and are residents and inhabitants of the county of Travis, in the western district of Texas, the office and official residence of the said Railroad Commission of Texas being fixed by the terms of said act at Austin, the capital of Texas, in the said county of Travis, and are citizens of said State of Texas; that for the information of your Honors a true copy of the said act of the Legislature creating the said Commission, approved April 3, 1891, is filed herewith, marked "Exhibit A," which said act, for convenience, is hereinafter called the "commission law."

III. That by an act of the Legislature of the State of Texas, approved on the 5th day of February, 1875, section eight (8) of the said original act of incorporation of the Gulf Company was amended. That said original act as so amended reads as follows:

An Act to incorporate the Gulf, Colorado & Santa Fe Railway Company, and to grant land in aid of the construction of the same.

SECTION 1. Be it enacted by the Legislature of the State of Texas, that J. P. Palmer, Albert Somerville, P. J. Willis, J. C. Higgins, W. H. Ledbetter, J. L. Darragh, Leon Blum, A. C. McKeen, W. K. Little, E. Sterling, C. Robertson, Frank W. Lathem, Thomas Allen, B. O'Connor, W. E. Scott, E. Pelot, J. S. Catlin, M. A. Bryan, Wm. Wagner, B. H. Basset, J. W. Carroll, J. L. D. Morrison, George Lawrence, Wm. R. Smith, N. B. Yard, C. E. Broussard, M. Kopperl and John S. Sellers, and their associates, be and are hereby appointed commissioners to open books and receive subscriptions to the capital stock of a corporation hereby created to be styled the Gulf, Colorado & Santa Fe Railway Company.

SEC. 2. That a majority of the commissioners shall constitute a board for the transaction of business, and shall hold meetings from time to time until directors shall be elected as provided hereinafter.

SEC. 3. That at the time of subscribing to the capital stock of this company not less than five per cent. of the amount subscribed shall be paid in.

SEC. 4. That the subscribers to the capital stock of this company are hereby created and established a body corporate and politic under the name and style of the Gulf, Colorado & Santa Fe Railway Company, with capacity to contract, to sue and be sued, to plead and be impleaded, to have succession, a common seal, to grant and receive, to make and enforce by-laws, and perform all things necessary to maintain their rights under this act.

SEC. 5. The capital stock of this company shall be two millions of dollars, to be increased by a vote of two-thirds of the stock-
4 holders, representing two-thirds of the stock, to such an amount, not exceeding seven millions of dollars, as may be requisite to carry out the object of this company, divided into shares of one hundred dollars, each share to entitle its holder and owner to one vote in all meetings or elections of the stockholders, and a majority of the stock shall govern except in cases otherwise specially provided. The said shares of stock shall be deemed personal property, transferable only on the books of the company.

SEC. 6. The direction and control of said corporation and its affairs shall be vested in a board of not less than seven nor more than thirteen directors, to be chosen by the stockholders at an annual meeting, the first of which shall be held in the city of Galveston whenever two hundred thousand dollars shall have been subscribed and five per cent. thereof paid in. The principal office shall be in Galveston, with the right to establish branch offices for the transfer of stock and for assistant treasurer to pay interest on bonds, and other purposes, in any city out of this State.

SEC. 7. A majority of the directors shall constitute a quorum to do business, and at their first meeting they shall elect a
5 president and one vice president. The board shall appoint a secretary and treasurer, and all other officers requisite to carry on the business of the company.

SEC. 8. That the said company, when duly organized, shall be and is hereby invested with the right of locating, constructing, owning, operating and maintaining a railway and telegraph line, commencing at the city of Galveston; thence northwesterly on the most direct and practicable route so as to intersect the Galveston, Harrisburg and San Antonia Railway on the dividing ridge between the Brazos and San Bernard rivers; thence on an air line, as near as practicable, to the town of Brenham, in Washington county, Caldwell, in Burleson county; thence to the town of Cameron, in Milan county; thence to the town of Belton, in Bell county; and in the event that the citizens of each of said towns shall donate to the said company the necessary right of way for road, switches and turnouts through said towns, and sufficient grounds for depot purposes, the depot shall be located within half a mile of the court house in each of said towns; thence up the Leon valley through Coryell and Hamilton counties, Comanche, in Comanche county, to Eastland county, forming a junction with the Texas Pacific Railway; thence through the border counties to Young Territory; thence in a northwesterly direction, over the most practicable route, to the Canadian river at some point on said river between the eastern boundary of the Panhandle and the one hundred and second degree of west longitude; thence up the valley of said river to the State line; thence to Santa Fe, making connection with the Denver & Rio Grande Railway, together with such turnouts, branches, sidings, and extensions as the said company may deem it to their interest to construct; with authority to construct, own, equip and maintain a branch road from Mill creek to the towns of LaGrange and Bastrop; *provided*, that when the direct route of said railway shall run within five miles of any county seat the said road shall run to the said county seat, and establish and maintain a freight and passenger depot at such town; *provided*, said town shall donate to said road the right of way for a single track, with all necessary switches, turnouts, side tracks, etc., together with sufficient grounds for depot purposes, not to exceed ten acres.

SEC. 9. Any agreement in writing to subscribe for stock may be enforced according to the terms of subscription, and, unless payment be made, the directors, after thirty days' due notice, may sell said delinquent stock and transfer the shares of said delinquent to the purchasers.

SEC. 10. It shall be lawful for said company to enter upon, purchase, or otherwise receive, take, hold or obtain, in the manner provided by the laws of this State, any lands necessary for the purpose of locating, constructing and maintaining said railway, with all needed depots, turnouts, sidings, extensions and buildings connected with said railway. When lands can not be obtained by agreement, the land taken for this railway shall not exceed two hundred feet in width, unless for depots and buildings. Whenever said railway shall be constructed over any part of the public domain of this State, the right of way, not exceeding two hundred feet along such portion of said line, and all necessary ground for depot buildings, turn-tables, turnouts, and side tracks, is hereby granted to said company, and

also the right to take from said public domain, and use, all rock, timber, earth or other material thereon necessary in the construction and maintenance of such portion of said railway.

SEC. 11. That said railway company shall have the right to cross all public highways and all railroads that it may be necessary to cross to establish said railway.

6 SEC. 12. That said company shall have power to borrow money, issue bonds, with or without mortgage; provided it is done in conformity to a vote of two-thirds of the directors, sanctioned by a majority of the stockholders, at a regular meeting, of which thirty days' public notice has been given; and generally this company shall have all power requisite to carry into successful effect the object of this company.

SEC. 13. That the first meeting of this company shall be called in the city of Galveston whenever two hundred thousand dollars of the capital stock shall have been subscribed, by giving sixty days' public notice in two or more newspapers published in the counties through which this railway is to pass, and the stockholders shall then proceed to elect directors, who may be residents or non-residents of the State of Texas, who shall hold office until the annual election, which shall take place at the company's principal office, in the city of Galveston, on the first Tuesday of October in each year. Should a majority of the stock be represented, the election shall proceed; if not, the directors shall appoint another day within thirty days thereafter by giving like due notice, and an election on that day shall be valid. Directors elected under the provisions hereof shall hold their office for the term of one year, or until their successors be chosen and qualified. No person shall be a director who is not the subscriber of ten or more shares of the capital stock of the company.

SEC. 14. That this charter shall remain in force for the period of sixty years from the date of this act; and the State of Texas hereby grants and donates to the said Gulf, Colorado and Santa Fe Railway Company sixteen sections of land for each and every mile of said road completed, and whenever the governor shall be informed that ten miles of said railroad shall have been completed, he shall at once appoint some competent person to inspect the same, and if the report of the inspector, made under oath, be favorable, the governor shall immediately notify the commissioner of the general land office, whose duty it shall be immediately to issue to said company sixteen land certificates, of six hundred and forty acres each, for each and every mile of road completed, and so on for every additional ten miles of road completed, which said certificates shall be located, surveyed and patented according to the provisions of the general railroad law, on the principle of alternate sections; *provided*, that each succeeding section of ten miles after the first shall be inspected in like manner as provided in this section for the first ten miles; *provided further*, that in no case shall the state be in any way liable for deficiency of vacant domain; *and provided further*, that this company shall not have the right to sell, rent, lease or consolidate with any parallel or competing railroad in this State; *and provided further*, that said company shall alienate the lands hereby

granted and donated, except so far as may be necessary for the ordinary uses and operating of said road, as follows, viz.: One-fourth in eight years, one-fourth in twelve years, one fourth in sixteen years, and the remaining fourth in twenty years from the date of the issuance of the certificates, in such manner that the whole of such lands shall pass out of the hands of such company within twenty years from the date of the certificates: *provided*, that said lands shall not be alienated to any other railroad or other corporation, except so far as may be necessary for the proper use and conducting of the business of such corporation; nor shall said lands be conveyed to any other person, firm or company, in trust for said railroad company, or to any firm or company of which any officer or stockholder of said railroad company is a member; and on failure to comply with or violation of the provisions of this section and the general laws of the State on this subject, the said company shall forfeit all right to lands secured by this act, not alienated as required by law.

SEC. 15. The said railway shall be constructed of such width of guage as the directors may establish, not less than four feet eight and a half inches. That said railway shall be substantially built and fully equipped for passenger travel and for the transportation of freight and be operated by steam in like manner as other first-class roads.

SEC. 16. That this company shall have power to charge and collect such rates of freight and such rates of passage as may be just and proper: *provided, however*, such charges do not exceed those that may be established by law; and the right is expressly reserved to the legislature to fix the rate of charges for freight and passage on said railroad by any general laws.

SEC. 17. That the organization of this company shall be perfected within six months from the date of the passage of this act, and thirty miles of their said railroad shall be completed within two years thereafter and fifty miles each year thereafter, or this charter will be forfeited as to that portion not built.

SEC. 18. The commissioners appointed in the first section of this act may acquire by gift or purchase any real estate or other property, notes and bonds either from individuals, corporations, towns, counties or cities, and may appoint an agent to receive subscriptions of stock and conveyances until the election of a board of directors, after which such powers may be exercises by said board of directors.

SEC. 19. This act shall take effect and be in force from and after its passage.

Passed May 28, 1873.

NOTE—The foregoing act was presented to the Governor for his approval on the 13th of May, A. D. 1873, and was not signed by him or returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.

[Signed] JAMES P. NEWCOMB,
Secretary of State.

That since said time, at different dates, there have been various amendments adopted to the charter of the Gulf Company under the laws of the State of Texas, each of said amendments, as required by said general laws, being signed and acknowledged by the board of directors of the Gulf Company, approved by the Attorney General of the State of Texas, and afterward filed with the Secretary of State of the State of Texas; that said amendments provided for the construction of various branches of the Gulf Company's railroad; that by the terms of the said original act of incorporation, and the various amendments thereof, the Gulf Company has been and is authorized to construct, own, operate and equip all of the railroad now
8 owned and operated by it; that under and by virtue of the said said original act of incorporation, and the various amendments thereof, the Gulf Company has heretofore constructed and equipped and is now operating lines of railroad as follows:

First—The main line, commencing at Galveston, in the county of Galveston, and extending through the counties of Galveston, Brazoria, Fort Bend, Austin, Washington, Burleson, Milam, Bell, Coryell, Lampasas and Brown, to the town of Coleman, in the county of Coleman, a distance of three hundred and seventy-nine and fifty-five hundredths (379.55) miles.

Second—The Northern branch, commencing at the city of Temple, in the county of Bell, and extending through the counties of McLennan, Bosque, Hill, Johnson, Tarrant, Denton, Cooke, to Purcell, in the Indian Territory, the Gulf Company having obtained from the Congress of the United States, by an act approved July 4, 1884, authority to construct said line through the said Indian Territory, a distance of two hundred and ninety-nine and twenty-four hundredths (299.24) miles.

Third—The Eastern branch, commencing at the town of Somerville, in Burleson county, and extending through the counties of Brazos, to Navasoto, in the county of Grimes, and from the town of Montgomery, in the county of Montgomery, to the town of Conroe, in said county, a distance of forty-four and eighty-six hundredths (44.86) miles.

Fourth—The Northeastern branch, commencing at the city of Dallas, in the county of Dallas, and extending through the counties of Collin, Hunt, Fannin, Delta, to Paris, in Lamar county, a distance of one hundred and fifty-three hundredths (100.53) miles.

Fifth—The Houston branch, commencing at Alvin, in the county of Brazoria, and extending to Houston, in the county of Harris, a distance of twenty-three and ninety-six hundredths (23.96) miles.

Sixth—The Red River branch, commencing at Ladonia, in Fannin county, and extending to Honey Grove, in Fannin county, a distance of eleven and fifty-two hundredths (11.52) miles.

Seventh—The Rio Grande branch, commencing at the town of Coleman Junction, in Coleman county, and extending through
9 the county of Runnels to San Angelo, in the county of Tom Green, a distance of seventy-two and eighteen hundredths (72.18) miles.

Eighth—The Northwestern branch, commencing at the town of

Cleburne, in Johnson county, and extending through the county of Hood to the city of Weatherford, in Parker county, a distance of forty and fifteen hundredths (40.15) miles.

That all of said lines are situated in the State of Texas, except about 100 miles of the Northern branch, which are in the Indian Territory.

That in the year 1882 the Gulf Company purchased the Central & Montgomery railroad, extending from the town of Navasota, in Grimes county, to the town of Montgomery, in Montgomery county, a distance of twenty seven and forty hundredths (27.40) miles, and has since owned and operated the same as a part of the said Eastern branch; and in the same year purchased the Chicago, Texas & Mexican Central railroad, extending from the city of Dallas, in Dallas county, through the county of Ellis to the city of Cleburne, in Johnson county, a distance of fifty-two and seventeen hundredths (52.17) miles, and has since then owned and operated the same as a part of its said Northeastern branch.

IV. That there being some doubt of the Gulf Company's right to own and operate the said two roads so purchased, the legislature of the State of Texas passed an act, approved on the 27th day of March, 1889, in substance as follows:

An act to ratify and confirm the title of the Gulf, Colorado & Santa Fe Railway Company to the Central & Montgomery Railroad, and to the Chicago, Texas & Mexican Central Railroad, and to all property of the companies which constitute said road, and to authorize the said Gulf, Colorado & Santa Fe Railway Company to own and operate said road under its charter.

SECTION 1. Be it enacted by the Legislature of the State of Texas, that the purchase heretofore made by the Gulf, Colorado & Santa Fe Railway Company, of all the property, rights, privileges and franchise of the Central & Montgomery Railway Company and the Chicago, Texas & Mexican Central Railway Company, including the railroads constructed by the said companies, are hereby sanctioned, ratified and confirmed. And the said Gulf, Colorado & Santa Fe Railway Company, being recognized as the owner of the same, is hereby authorized to own, operate and maintain said railroads under its own charter, as though said railroads had been originally constructed under said charter. The said Gulf, Colorado & Santa Fe Railway Company shall hold the property, real and personal, by the same title that it was held by the railroad company from whom it was acquired, and shall not be allowed to make any defense to any claim or charter obligation against it on account of said property or its duty to the public that the said railway company from which it so acquired it could not make (if it were the party defendant). The said Gulf, Colorado & Santa Fe Railway Company shall be liable for all valid claims and for all obligations to the public that existed against either of the said railway companies at the time of the purchase from it. The rights of any and all parties having suits or claims against said companies, or either of them, shall remain against the Gulf, Colorado & Santa

Fe, the same as if they were against the company from which the said purchase was made, provided that if under its charter or existing laws the Central & Montgomery Railway Company is under obligations to maintain a depot at the town of Montgomery where it was first established, and the Gulf, Colorado & Santa Fe Railway Company shall hereafter fail to maintain the same there, then all the rights granted hereby shall be forfeited to the State on proceedings that may be instituted by the Attorney General.

SEC. 2. The near approach of the close of the present session of the legislature creates an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so suspended.

Approved March 27, 1889.

V. Your orator is informed, believes and therefore alleges, that on or about the 21st day of June, 1879, the Gulf Company executed a certain indenture, mortgage or trust deed with John S. Kennedy and Charles M. Fry, residents of the city of New York, and State of New York, as trustees, which is and was as follows:

Deed of Trust.

Executed June 21, 1879, between the Gulf, Colorado & Santa Fe Railway Company of Texas and John S. Kennedy and Charles M. Fry, of the city and State of New York, as trustees, and registered in the respective offices of the clerks of the county courts of the following counties in the State of Texas: Galveston, Brazoria, Fort Bend, Austin, Burleson, Milam, Bell, McLennan, Bosque, Hill, Johnson, Tarrant:

This indenture, made the twenty-first day of June, one thousand eight hundred and seventy-nine, between the Gulf, Colorado & Santa Fe Railway Company, a corporation under the laws of the State of Texas, party of the first part, and John S. Kennedy and Charles M. Fry, residents of the city and State of New York, parties of the second part, witnesseth:

Whereas, the said party of the first part, under and in pursuance of an act of the Legislature of the State of Texas, passed May 28, 1873, entitled "An act to incorporate the Gulf, Colorado and Santa Fe Railway Company, and to grant land in aid of the construction of the same," and of the amendments thereto, has power to construct, own, operate and maintain a railway and telegraph line from the city of Galveston to the city of Santa Fe, and has already
11 constructed and put in operation as part of said line its railway from Galveston to Richmond, about sixty-three (63) miles; and

Whereas, said company, in pursuance of the authority conferred by its charter and in conformity to a vote of two-thirds of the directors of said company, sanctioned by a majority of the stockholders thereof at a regular meeting, of which thirty (30) days' public notice was given, in order to extend, construct, complete and equip its said railway, has determined to issue a series or bonds of said company

at the rate of twelve thousand dollars on each mile of said railroad now or hereafter built, the number of miles thus completed to be conclusively determined by written certificates signed by the president and chief engineer of the party of the first part, furnished by the trustees herein named, said bonds to bear date the first day of July, 1879, and to be payable thirty (30) years after date, each for the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually in the city of New York, with coupon attached for said interest: principal and interest of said bonds to be payable in United States gold coin, all of said bonds to be equally secured by these presents, although they may be issued at different times, and to be authenticated by a certificate signed by said trustees. The said bonds and coupons to be substantially in form as follows:

THE UNITED STATES OF AMERICA, STATE OF TEXAS.

No..... First Mortgage Gold Bearing Bonds. $1,000.00

The Gulf, Colorado & Santa Fe Railway Company of Texas.

The Gulf, Colorado & Santa Fe Railway Company promises to pay the bearer one thousand dollars in United States gold coin, in the city of New York, thirty years after the date hereof, with interest thereon at the rate of seven per cent. per annum from date, payable on the first day of January and July of each year, in like gold coin, on the presentation of the annexed coupons therefor. This bond is one of a series, numbered consecutively from one upwards, issued twelve to each mile of completed railroad of said company, all of which are equally secured by a deed of trust, with first lien, bearing date June 21st, 1879, executed by said company to John S. Kennedy and Charles M. Fry, as trustees, conveying all and singular, the said railway from Galveston to Richmond, and its extension to Belton and all other further extensions, with all equipments, appurtenances and franchises. This bond shall not become obligatory unless the certificate endorsed hereon is signed by said trustees or their successors in this trust, who shall countersign and deliver this series of bonds at the rate of twelve to each mile of completed road.

In witness whereof, the said Gulf, Colorado & Santa Fe Railway Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and countersigned by its secretary.

[SEAL.]

Galveston, Texas, July 1st, 1879.

[Signed] JOHN SEALY, *President.*

[Signed] C. C. ALLEN, *Secretary.*

Coupons.

On the first day of January (or July) the Gulf, Colorado & Santa Fe Railway Company will pay to bearer, in the city of New York, thirty-five dollars in United States gold coin, for semi-annual interest on its first mortgage bond No.....

[Signed] C. C. ALLEN, *Secretary.*

12 *Trustees' Certificate.*

The undersigned trustees hereby certify that the Gulf, Colorado & Santa Fe Railway Company has executed to us a deed of trust, dated June 21, 1879, purporting to convey to us the entire railroad of said corporation constructed and to be constructed, its equipments, appurtenances and franchises, and purporting to be a first lien to secure the payment of this series of bonds for twelve thousand dollars to the mile completed of said road, and that no more bonds have been signed or certified by us than are authorized by the said deed of trust.

[Signed] JOHN S. KENNEDY,
[Signed] CHARLES M. FRY,
Trustees.

Now, therefore, this Indenture further witnesseth: That for and in consideration of the premises, and the sum of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of said bonds, the said Gulf, Colorado & Santa Fe Railway Company does hereby grant, bargain, sell, alien, convey and confirm unto the said John S. Kennedy and Charles M. Fry, parties of the second part, as trustees and the survivor of them and to their successor or successors, as hereinafter provided, all and singular the said company's railway now built from Galveston to Richmond, a distance of about sixty-three miles, and to be extended thence to Belton, a further distance of about one hundred and fifty-nine miles, and passing through the counties of Galveston, Brazoria, Fort Bend, Austin, Washington, Burleson, Milam and Bell, and thence from Belton further as extended, together with all the railways, ways and rights of way, track, rails, bridges, viaducts, culverts, fences and structures of every kind, all depots, station houses, engine houses, car houses, wood houses, machine shops, water tanks, and all other buildings, together with the lots or parcels of land on which each and all may be erected, and all locomotives, tenders, passenger, baggage, mail, freight, hand and other cars, and all rolling stock and equipments, and all machinery, tools, implements, fuel and materials, and all furniture, maps, books of accounts, vouchers, receipts and assets of every kind, all leasehold premises and leases, incomes, tolls, rents, issues, profits, reversions and remainders, all which herein specified recited premises and property, and all other real and personal property which does now or may at any time during the continuance of this trust belong to said company are included and embraced in this conveyance, with all appurtenances thereto, together with all the present and future franchises and chartered rights, privileges, and immunities which now do or at any time during this trust may belong or appertain to said company, including the franchise to be a corporation. But it is understood that the lands which may be acquired by said company from the State of Texas, and all other lands it may acquire by donation or otherwise, except for some of the purposes hereinbefore specified, and used

in connection with said railway or the operating thereof, are not hereby conveyed nor intended to be.

TO HAVE AND TO HOLD, all and singular, the said railway, premises, property, rights and franchises hereby conveyed and intended to be, unto the said John S. Kennedy and Charles M. Fry, parties of the second part, their heirs and assigns, as trustees, as joint tenants and not tenants in common, and the survivor of them, his or their successor or successors, as hereinafter provided, in trust for the owners and
13 holders of said bonds or any of them, subject to the terms and stipulations of said bonds and the interest coupons thereto annexed and the provisions of the charter of the said company, and also subject to the management of said party of the first part and its assigns, so long as the said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture. And in case the said Gulf, Colorado & Santa Fe Railway Company shall fail to pay the principal or any part thereof or the whole of the interest on all said bonds when the same may become due and payable according to the tenor thereof, and if the said default shall continue six months after having been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, and the said trustees or their successors in this trust, if the said default shall continue, may, and at the request of the holders of one-half of the said bonds then outstanding, and upon receiving suitable indemnity against risks and expenses, shall take actual possession of said railroad and of all and singular the premises, rights, and privileges herein conveyed, and personally or by agent or attorney shall manage and operate said railroad, premises, property, etc., and shall receive all the tolls, freights, incomes, rents, issues and profits therefrom, together with all the books, papers, records, accounts, assets and moneys of said company, for the purpose of paying equally the said bonds issued under this mortgage, first defraying out of the same all the expenses of operating the road and its needful repairs and replacements and all expenses of the execution and management of this trust; or the said parties of the second part and their successors in said trust may, in their discretion, if said default is still continuing, and shall on the written request of the holders of at least one-half of the bonds then unpaid and outstanding, and upon receiving suitable indemnity against risks and expenses, cause all and singular the said morgaged property, appurtenances, franchises, rights and privileges to be sold, altogether and in bulk as an entirety, before the county courthouse door in the city of Galveston, giving at least ninety days' notice of the time, place, and terms of such sale by publishing the same once in each week during the said ninety days in a newspaper of good circulation in said city and in one or more newspapers of the city of New York, and, receiving the purchase money therefor, shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which sale and conveyance shall be a bar against the party of the first part, its successors and assigns, and all persons claiming under them, of all right, interest,

or claim in or to said premises so sold, or any part thereof, forever; and the receipt of said trustees shall be a full and sufficient discharge of said purchaser thereof, who shall not be liable or in any way bound to see said purchase money applied to this trust, or in any manner answerable for its loss or misapplication; and the said trustees shall, after deducting from the proceeds of said sale the cost and expenses thereof, and of managing said property, if the same has been in their possession, and all payments for taxes, assessments, and counsel fees, and also a commission to said trustees for said sale, apply the proceeds to the payment of the principal and interest of said bonds in full; or should the same not be sufficient therefor, to the equal pro rata payment thereof; or if there be a residue of such proceeds, shall pay the same to said party of the first part, but the said trustees may, in their discretion, instead of taking possession of the said property or selling the same, proceed by the ordinary methods of foreclosure and sale under the decree of a com-
14 petent court, and nothing herein contained shall be construed as limiting their right to apply to such court for such relief or for the usual relief in the course of such proceedings.

The said party of the first part binds itself peaceably to surrender all said premises, property and rights to said trustees on their demand as aforesaid, and to the purchaser thereof immediately, and hereby expressly waives and agrees that it will not take the benefit or advantage of any valuation, appraisement, extension or relief laws, but the actual possession of the property shall not be necessary to the exercise of the power of sale by the trustees and to the validity and full effect of the same, and the purchaser shall have full right immediately to enter into and take possession of the same.

In the purchase of said property and premises upon a sale made either by the trustees or by the court, under decree of foreclosure, bondholders or the trustees on their behalf being the highest bidders, shall have equal right of purchase, and the bonds of said company secured by this mortgage shall be receivable at such sale as cash for the amount of cash which would be payable on such bonds out of the proceeds of sale. It is further expressly provided that the recitals in the conveyance by the trustees to the purchaser shall be full evidence of the matters therein stated, and no other proof shall be requisite of default in the payment of said bonds or coupons, or of request by the specified number or proportions of the holders of said bonds for the enforcement of this trust, or of the due appointment and authority of the trustees or trustee acting, or of the advertisement or sale, or any particulars thereof, and all prerequisites to said sale shall be presumed to have occurred or to have been performed.

In case of the resignation, death, refusal or inability to act from any cause of the trustees named herein, or either of them, or any successor trustee, the holders of a majority of said bonds then outstanding may, by a certificate signed by them and served upon the surviving trustee, or if none survives, then upon one of the directors of the party of the first part, fill any and all such vacancies of said trustees, and such certificate shall be full evidence of the right and

authority of such trustee. But should such certificate not be so served within sixty days after such vacancy occurs, the surviving trustee shall appoint a co-trustee by an instrument in writing, which shall take effect when signed by holders of twenty-five per cent. of the bonds secured by this deed and then outstanding, and served upon a director of the party of the first part. And such successor trustee or trustees appointed as aforesaid shall immediately thereupon become vested with all the same powers, rights and interests and charged with all the same duties and responsibilities as if he or they had been of the original trustees, parties of the second part, named in these presents.

Wherever the word trustees is used in these presents it shall be construed to mean the trustee or trustees for the time being, whether original or substituted, and whenever a vacancy shall exist to mean the surviving or continuing trustee, who shall during such vacancy be competent to exercise all the powers by these presents granted to or conferred upon the parties of the second part.

Trustees under this instrument shall only be liable for fraud or willful misconduct, and shall not in any case be held individually liable for any act or default of each other, or of any agent or person employed by them or him in any capacity on or about the management or operation of said road, property or money arising therefrom, but shall only be required to exercise good faith in the selection and appointment of such agents or persons.

And the said trustees may convey or release upon the written request of the party of the first part any lands which the company may disuse or abandon by reason of any change of location of any station house, building or stock yard, connected with said railroad, and may consent to such change and to such other changes in the location of the track, buildings or stock yards as they shall deem expedient, and may make and deliver the instruments necessary to carry the same into effect.

It is further provided that the trustee or trustees who shall act under this conveyance may take such legal advice and employ such assistance as may be necessary in their judgment to the proper discharge of their duties, and shall be entitled to receive reasonable compensation for every labor or service performed by them or him in the discharge of this trust and for all their reasonable expenses and disbursements. It is expressly stipulated that the compensation to the trustee or trustees who may act in making a sale of the mortgaged premises herein conveyed, for making such sale and executing a deed thereunder shall be one-half of one per cent. on the proceeds of such sale.

This deed shall take effect when signed by the trustees in token of their acceptance of the trust hereby created.

In testimony whereof, said party of the first part (The Gulf, Colorado & Santa Fe Railway Company) hereby executes this instrument by causing the same to be signed by the president of said company and by the secretary of said company, with the seal of said company hereunto affixed, and the parties of the second part

[SEAL] also execute the same in token of their acceptance of the trust, the day first above written.

[Signed] C. C. ALLEN, *Sec'y G. C. & S. F. R'y.* [Signed] JOHN SEALY, *Pres. G. C. & S. F. R'y.*

VI. Your orator is informed, believes and therefore alleges, that on or about the 4th day of December, in the year 1882, the Gulf Company, with the same trustees, made, executed and delivered a certain other indenture, mortgage or trust deed, supplemental to the said indenture of June 21, 1879, which said indenture or trust deed is in substance as follows:

THIS INDENTURE, made this fourth day of December, in the year one thousand eight hundred and eighty-two, between the Gulf, Colorado & Santa Fe Railway Company, a corporation created by and existing under the laws of the State of Texas, party of the first part, and John S. Kennedy and Charles M. Fry, of the city and State of New York, parties of the second part.

WHEREAS, on the 21st day of June, in the year one thousand eight hundred and seventy-nine, the parties hereto mutually entered into and executed a certain deed of trust for the purpose of securing the payment of certain first mortgage gold bonds in the said deed more particularly described, to which original deed reference may be had for greater particularity:

16 AND WHEREAS, the party of the first part was originally incorporated under and in pursuance of an act of the legislature of the State of Texas, passed May twenty-eighth, in the year one thousand eight hundred and seventy-three, entitled, "An Act to incorporate the Gulf, Colorado & Santa Fe Railway Company, and to grant land in aid of the construction of the same;" and since the execution of the said deed of trust, the charter of the party of the first part has been amended in accordance with law in such manner as to authorize the construction, operation and maintenance by it of other lines of railway and telegraph, in addition to those mentioned in the said charter, or in any amendments thereto in existence at the date of the said deed of trust;

AND WHEREAS, it was the intention of the parties to said deed of trust that the bonds issued thereunder and therein more particularly described, should be secured by a first lien upon all the real and personal property of the party of the first part, whether then owned or thereafter to be acquired, and upon all the lines of railway and telegraph which it then had the power to construct or might thereafter acquire power to construct, excepting only from such property the lands specifically excepted by the express terms of said deed of trust; but doubts have arisen as to the sufficiency of the said deed to effect that purpose, and it is the desire and intention of the parties hereto to carry their original purpose into full effect;

AND WHEREAS, at a meeting of the board of directors of the party of the first part, held at Galveston on the fourteenth day of August, one thousand eight hundred and eighty-two, it was unanimously resolved by the said directors (more than two-thirds of all the said directors being present and voting) that an instrument by way of

supplementary mortgage or deed of trust should be executed to the parties of the second part by the party of the first part, in the form substantially used in this indenture, to secure all the said bonds and also similar bonds issued and to be issued at the rate of twelve thousand dollars on each mile of the railway of the party of the first part, now or hereafter built; the number of miles thus completed to be conclusively determined by written certificates, signed by the president and the chief engineer of the party of the first part, furnished to the trustees herein named; said bonds to bear date the first day of July, one thousand eight hundred and seventy-nine, and to be payable thirty (30) years after date, each for the sum of one thousand dollars, with interest at the rate of seven per cent per annum, payable semi-annually in the city of New York, with coupons attached for said interest; principal and interest of said bonds to be payable in United States gold coin; all of said bonds to be equally secured by these presents, although they may be issued at different times, and to be authenticated by a certificate signed by said trustees; the said bonds and coupons to be substantially in form as follows:

THE UNITED STATES OF AMERICA, STATE OF TEXAS.

No..... First Mortgage Gold-Bearing Bond. $1000

The Gulf, Colorado and Santa Fe Railway Company of Texas.

The Gulf, Colorado and Santa Fe Railway Company promises to pay to bearer one thousand dollars in United States gold coin, in the city of New York, thirty years after date hereof, with interest thereon at the rate of seven per cent per annum from date, payable on the first day of January and July of each year, in like
17 gold coin, on the presentation of the annexed coupons therefor. This bond is one of a series, numbered consecutively from one upwards, issued twelve to each mile of completed railroad of said company, all of which are equally secured by a deed of trust, with first lien, bearing date June the twenty-first, 1879, executed by said company to John S. Kennedy and Charles M. Fry, as trustees, conveying all and singular the said railway from Galveston to Richmond and its extension to Belton, and all further extensions, with all equipments, appurtenances and franchises. This bond shall not become obligatory unless the certificate endorsed hereon is signed by said trustees or their successors in this trust, who shall countersign and deliver this series of bonds at the rate of twelve to each mile of completed road.

IN WITNESS WHEREOF, the said Gulf, Colorado & Santa Fe Railway Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and countersigned by its secretary.

Galveston, Texas, July 1, 1879.

.... *Secretary.* ..... *President.*

Coupon.

On the first day of January [or July] the Gulf, Colorado & Santa Fe Railway Company will pay to bearer, in the city of New York,

thirty-five dollars in United States gold coin, for semi-annual interest on its first mortgage bond.

Bond No. ..... *Secretary.*

Trustees' Certificate.

The undersigned trustees hereby certify that the Gulf, Colorado and Santa Fe Railway Company has executed to us a deed of trust, dated June the twenty-first, 1879, purporting to convey to us the entire railroad of said corporation, constructed and to be constructed, its equipment, appurtenances and franchises, and purporting to be a first lien to secure the payment of this series of bonds for twelve thousand dollars to the mile completed of said road, and that no more bonds have been signed or certified by us than are authorized by the said deeds of trust.

.... *Trustees.*

AND WHEREAS, the stockholders of the party of the first part, at a meeting regularly called according to law, upon sixty (60) days' notice, for the purpose of authorizing the execution of a mortgage upon its property, and held at Galveston on December 1, 1882, did by the vote of more than two-thirds of all the said stockholders in value, ratify and confirm the said action of the said directors, and authorize the execution of this instrument.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That for and in consideration of the premises, and of the sum of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of said bonds, the said Gulf, Colorado and Santa Fe Railway Company does hereby grant, bargain, sell, alien, convey and confirm unto the said John S. Kennedy and Charles M. Fry, parties of the second part, their heirs and assigns, as trustees, as joint tenants, and not tenants in common, and unto the survivor of them, his or their successor or successors, as hereinafter provided, any and all railways of the said Railway Company, now constructed or hereafter to be constructed or authorized, wheresoever situated, including main lines, branches and extensions, together with all the railways, ways and rights of way, track, rails, bridges, viaducts, culverts, fences and structures of every kind, all depots, station houses, engine houses, wood houses, machine shops, water tanks, and all other buildings, together with the lots or parcels of land on which each and all are or may be erected, and all locomotives, tenders, passenger, baggage, mail, freight, hand and other cars, and all other rolling stock and equipment, all machinery, tools, implements, fuel and materials, all furniture, maps, books of accounts, vouchers, receipts and assets of every kind, all leasehold premises and leases, income, tolls, rents, issues, profits, reversions and remainders, all which herein specified recited premises and property and all other real and personal property now or at any time during the continuance of this trust belonging or to belong to said company are included and embraced in this conveyance, with all appurtenances thereto, together with all the present and future franchises and chartered rights, privileges and immunities which now do or at any

18

time during this trust may belong to or appertain to said company, including the franchise to be a corporation. But it is understood that the lands which may be acquired by said company from the State of Texas, and all other lands it may acquire by donation or otherwise, except those acquired for some of the purposes hereinbefore specified and used in connection with said railway or the operating thereof, and not hereby conveyed nor intended so to be.

TO HAVE AND TO HOLD all and singular the said railway, premises, property, rights and franchises hereby conveyed or intended so to be, unto the said John S. Kennedy and Charles M. Fry, parties of the second part, their heirs and assigns, as trustees, as joint tenants and not tenants in common, and unto the survivor of them, his or their successor or successors, as hereinafter provided, in trust for the owners and holders of said bonds or any of them, subject to the terms and stipulations of said bonds and the interest coupons thereto annexed, and to the provisions of the charter of the said company, and also subject to the possession and management of said party of the first part and its assigns, so long as it or they shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture. And in case the Gulf, Colorado and Santa Fe Railway Company shall fail to pay the principal or any part thereof or the whole of the interest on all said bonds, when the same may become due and payable according to the tenor thereof, and if such default shall continue six months after such payment has been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, and the said trustees, or their successors in this trust, if the said default still continues, may, and upon the request of the holders of one-half of the said bonds then outstanding, and upon receiving suitable indemnity against risk and expenses, shall take actual possession of said railroad, and of all and singular the premises, rights and privileges herein conveyed, and personally or by agents or attorneys shall manage and operate said railroad, premises, property, etc., and receive all the tolls, freight, income, rents, issues and profits therefrom, together with all the books, papers, records, accounts, assets and moneys of said company for the purpose of paying equally the said bonds issued under this mortgage, first defraying out of the same all the expenses of operating the road, and its needful repairs or replacements, and all the expenses of the execution and management of this trust; or the said parties of the second part and their successors in said trust
19 may, in their discretion, if said default is still continuing, and shall, on the written request of the holders of at least one-half of the bonds then unpaid and outstanding, and upon receiving suitable indemnity against risks and expenses, cause all and singular the said mortgaged property, appurtenances, franchises, rights and privileges to be sold, altogether and in bulk, before the county court house door, in the city of Galveston, giving at least ninety days' notice of the time, place and terms of such sale, by publishing the same once in each week during the said ninety days, in a newspaper of good circulation in said city, and in one or more news-

papers of the city of New York; and upon receiving the purchase money thereof, they shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same; which sale and conveyance shall be a bar against the party of the first part, its successors and assigns, and all persons claiming under them, of all right, interest or claim in or to said premises so sold, or any part thereof, forever. And the receipt of said trustees shall be a full and sufficient discharge of said purchaser thereof, who shall not be liable or in any way bound to see said purchase money applied to this trust, or in any manner answerable for its loss or misapplication. And the said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, if the same has been in their possession, and all payments for taxes, assessments and counsel fees, and also a commission to said trustees for said sale, apply the proceeds to the payment of the principal and interest of said bonds in full; or should the same not be sufficient for such full payment, then to the equal pro rata payment thereof; and, if there be a residue of such proceeds, they shall pay the same to said party of the first part; but the said trustees may, in their discretion, instead of taking possession of their said property or selling the same, proceed by the ordinary methods of foreclosure and sale, under the decree of a competent court; and nothing herein contained shall be construed as limiting their right to apply to such court for such relief, or for the usual relief in the course of such proceedings.

The said party of the first part binds itself peaceably to surrender all said premises, property and rights to said trustees on their demand as aforesaid, and to the purchaser thereof immediately, and hereby expressly waives and agrees that it will not take the benefit or advantage of any valuation, appraisement, extension or relief laws; and the actual possession of the property shall not be necessary to the exercise of the power of sale by the trustees and to the validity and full effect of the same; and the purchaser shall have full right immediately to enter into and take possession of the same.

In the purchase of said property and premises, upon a sale made either by the court, under decree of foreclosure, or by the trustees themselves, bondholders, or the trustees on their behalf, being the highest bidders, shall have equal right of purchase with all other persons, in the same manner as if they were not interested; and the bonds of said company secured by this mortgage shall be receivable at such sale as cash for the amount of cash which would be payable on such bonds out of the proceeds of sale.

It is further expressly provided that the recitals in the conveyance by the trustees to the purchaser shall be full evidence of the matters therein stated; and no other proof shall be requisite of default in the payment of said bonds or coupons, or of request by the specific number or proportion of the holders of said bonds
20 for the enforcement of this trust, or of the due appointment, and authority of the trustees or trustee acting, or of the advertisement of sale, or any particulars thereof; and all prerequisites to

said sale shall be presumed to have occurred or to have been performed.

In case of resignation, death, refusal or inability to act, from any cause, of the trustees named herein, or either of them, or any successor trustee, the holders of a majority of said bonds then outstanding may, by a certificate signed by them and served upon the surviving trustee, or, if none survives, then upon one of the directors of the party of the first part, fill any and all such vacancies of said trustees; and such certificates shall be full evidence of the right and authority of such trustee. But should such certificate not be so served within sixty days after such vacancy occurs, the surviving trustees shall appoint a co-trustee by an instrument in writing, which shall take effect when signed by holders of twenty-five per cent of the bonds secured by this deed and then outstanding, and served upon a director of the party of the first part. And such successor trustee or trustees appointed as aforesaid shall immediately thereupon become vested with all the same powers, rights and interests, and charged with all the same duties and future responsibilities, as if he or they had been, of the original trustees parties of the second part named in these presents.

Wherever the word "trustees" is used in these presents it shall be construed to mean the trustees or trustee for the time being, whether original or substituted, and, whenever a vacancy shall exist, to mean the surviving or continuing trustee, who shall during such vacancy be competent to exercise all the powers by these presents granted to or conferred upon the parties of the second part.

Trustees under this instrument shall only be liable for fraud or willful misconduct, and shall not in any case be held individually liable for any act or default of each other, or of any agent or person employed by them or him in any capacity in or about the management or operation of said road, property or money arising therefrom, but shall only be required to exercise good faith in the selection and appointment of such agents or persons.

And the said trustees may convey or release, upon the written request of the party of the first part, any lands which the company may disuse or abandon by reason of any change of location of any station house, building or stockyard, connected with said railroad, and may consent to such change and to such other changes in the location of the track, buildings or stockyards, as they shall deem expedient, and may make and deliver the instruments necessary to carry the same into effect.

It is further provided, that the trustees or trustee who may act under this conveyance may take such legal advice and employ such assistance as may be necessary in their judgment to the proper discharge of their duties, and shall be entitled to receive reasonable compensation for every labor or service performed by them or him in the discharge of this trust and for all their reasonable expenses and disbursements. It is expressly stipulated that the compensation to the trustee or trustees who may act in making a sale of the mortgage premises herein conveyed, for making such sale and executing

a deed thereunder, shall be one-half of one per cent on the proceeds of such sale.

IT IS HEREBY EXPRESSLY AGREED that the said deed of trust, executed on the 21st day of June, 1879, and the bonds issued thereunder and therein described, shall be construed as though the said deed had from the beginning been amended so as to conform to all the
21 foregoing provisions of this indenture, and as though all the railways and other property, rights and franchises of the party of the first part, made subject to the lien and trust hereby created, had been expressly and in terms included in the said original deed of trust, and that all the bonds heretofore issued by the party of the first part and certified to by the signatures of the parties of the second part, in manner and form as prescribed by the said original deed of trust, shall be secured by and entitled to all the benefits of this indenture, equally and upon the same footing with bonds issued in pursuance of this indenture, and that all the bonds hereafter issued under and in pursuance of this indenture, and entitled to the benefit of the trust and lien hereby created, shall also be entitled, equally and upon the same footing with similar bonds issued under the said original deed of trust, to the benefit of the trust and lien thereby created: it being the express intention of all parties hereto that all of the bonds issued under and in pursuance of the said original deed of trust or of this indenture shall stand upon the same footing and be entitled in all respects to the same benefits (no bond or series of bonds having any preference over any other bond or series of bonds), to the same effect and in the same manner as if this indenture had been contained in the said original deed of trust, and the two instruments had been consolidated into one, and also as if all the said bonds which have heretofore been issued or may hereafter be issued had been actually issued at one time and under one instrument containing all the provisions that are included in the said original deed of trust and in this indenture.

This deed shall take effect when signed by the trustees in token of their acceptance of the trust hereby created.

IN WITNESS WHEREOF, the said The Gulf, Colorado and Santa Fe Railway Company, party of the first part, in pursuance of the authority conferred upon it by law, and of a resolution of its board of directors passed the fourteenth day of August, 1882, and of a resolution passed by a vote of the holders and owners of two-thirds of all its capital stock, at a meeting of its stockholders called according to law and held at the city of Galveston, on the fourth day of December, 1882, has caused this indenture to be subscribed in its name by its president and secretary, and the corporate seal of said company to be affixed thereto; and the parties of the second part, for the purpose of testifying to their acceptance of the trust hereby created, have also affixed their signatures and seals hereto, the day and year first above written.

VIa. Your orator is informed, believes, and therefore alleges, that under and by virtue of the said original trust deed and said supplemental trust deed, there have been issued and certified by

the trustees, as therein provided, sold to purchasers in good faith, the proceeds whereof have been paid into the treasury of the Gulf Company, and used by it for purposes for which its charter authorized it to sell bonds, and are now outstanding, unpaid, held and owned by purchasers in good faith, 12,636 of the Gulf Company's first mortgage bonds, in the sum of one thousand ($1000.00) dollars each, bearing interest at the rate of seven per cent per annum,
22 payable on the first days of January and July of each year, both interest and bonds being payable in gold coin, which said bonds will mature thirty years from the first day of July, 1879, being at the rate of twelve ($12,000.00) dollars per mile for each mile of road constructed or owned and operated by the Gulf Company.

VII. That on or about the 15th day of June, 1885, the Gulf Company made, executed and delivered to your orator, as trustee, a certain indenture or second mortgage or trust deed, in substance as follows:

THIS INDENTURE, made this fifteenth day of June in the year one thousand eight hundred and eighty-five, between the Gulf, Colorado & Santa Fe Railway Company, a corporation created by and existing under the laws of the State of Texas, party of the first part, and the Farmers' Loan and Trust Company, a corporation created by and existing under the laws of the State of New York, party of the second part, witnesseth:

WHEREAS, the said party of the first part, under and in pursuance of an act of the Legislature of the State of Texas, passed May 28, 1873, entitled "An Act to incorporate the Gulf, Colorado & Santa Fe Railway Company, and to grant land in aid of the construction of the same," and of the amendments duly made to said act, and the charter of said company, has power to construct, own, operate and maintain a railway and telegraph line from the city of Galveston to the city of Santa Fe, and also the several branches thereof, and has already constructed and acquired, and now owns and is operating, as part of its said lines, 536 miles of railway; and said company by its charter and by the general laws of the State, has the power to borrow money and to issue its bonds, secured by trust deed and mortgage thereon; and,

WHEREAS, the party of the first part, being thereunto duly empowered as aforesaid, did, on or about the first day of August, one thousand eight hundred and eighty-three, make and execute to the party hereto of the second part, its certain trust deed and mortgage, dated that day, to secure a series of bonds, to be issued as therein set forth, but not to exceed in the entire aggregate thirteen to each mile of main track of the completed railway of said company, constructed and to be constructed or acquired, and all branch lines of said railway, their issuance being limited as in said trust deed and mortgage set forth, as by reference to the same will more fully appear; and,

WHEREAS, the party of the first part, under and in accordance with the terms and provisions of said trust deed and mortgage, has

made and issued two thousand one hundred and forty-four of the bonds secured thereby, and now desires to call in and cancel all the bonds so issued and outstanding, and to issue, in place and stead thereof, the bonds hereinafter provided for, in accordance with the terms and conditions of these presents, and the making hereof and of the bonds hereinafter described has been determined upon by the directors of the party of the first part, by unanimous vote, at a meeting duly held, and such action of said directors has been approved, ratified and confirmed by the stockholders of said company, at a meeting duly held, in pursuance of due notice, by a vote of the holders of more than two-thirds of all the stock of the party of the first part in value; and,

WHEREAS, the said bonds so to be issued, together with the interest warrants of coupons thereto attached, are in the form and figures following:

THE UNITED STATES OF AMERICA, STATE OF TEXAS.

No. ..... Second Mortgage Gold Bearing Bond. $1,000.00

The Gulf, Colorado & Santa Fe Railway Company, of Texas.

The Gulf, Colorado and Santa Fe Railway Company promises to pay to bearer, one thousand dollars in United States gold coin, in the city of New York, on the first day of October, nineteen hundred and twenty-three, with interest thereon at the rate of six per cent. per annum, payable on the first day of April and October in each year in like gold coin, in the city of New York, on the presentation of the annexed coupon therefor. This bond is one of a series numbered consecutively from one upwards, not to exceed in the entire aggregate eight to each mile of main track of said company's completed railway, constructed and to be constructed or acquired, and all branch lines of said railway; all of which bonds are equally secured by a deed of trust, with second lien and mortgage, bearing date of June fifteenth, 1885, executed by said railway company to the Farmers' Loan and Trust Company, a corporation of the City of New York, as trustee, conveying all and singular the railway of said railway company, now constructed or hereafter to be constructed or acquired, wheresoever situated, including main lines, branches, extensions or acquisitions, with all appurtenances, equipments and franchises. This bond shall not become obligatory unless the certificate endorsed herein is signed by said trustee, or its successor in this trust, who shall countersign this series of bonds, in amounts limited as above set forth.

IN WITNESS WHEREOF, the said Gulf, Colorado & Santa Fe Railway Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and countersigned by its secretary.

Galveston, Texas, June 15, 1885.

.... *Secretary.* ..... *President.*

Coupon.

On the first day of April (or October), 18..., the Gulf, Colorado and Santa Fe Railway Company will pay to bearer, in the city of New York, thirty dollars in United States gold coin, for semi-annual interest on its second mortgage bond.

No..... ..... *Secretary.*

Trustee's Certificate.

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the bonds mentioned in the within described mortgage.

THE FARMERS' LOAN AND TRUST COMPANY,
By..... .....*President.*

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that for and in consideration of the premises, and of the said sum of one dollar to it duly paid by the said parties of the second part, the receipt of
24 which is hereby acknowledged, and in order to secure the certain and prompt payment of the interest and principal of all said bonds, to wit:

Bonds of one thousand dollars each, to be dated June 15, 1885, and payable October 1, 1923, bearing interest at the rate of six per cent per annum, interest payable semi-annually, on the first day of April and October in each year, in the city of New York. The issuance of said bonds to be limited, in the aggregate, to eight thousand dollars per mile of main track of completed railway.

The miles of completed railway to be ascertained by the certificate of the president and chief engineer of said company, which certificate shall be conclusive evidence to the trustee of the completion of the number of miles mentioned therein.

The said Gulf, Colorado & Santa Fe Railway Company does hereby grant, bargain, sell, alien, convey, and confirm unto the said Farmers' Loan and Trust Company, party of the second part, all the railway, franchise and property of said company, as follows: Any and all railways of said railway company, now constructed or hereafter to be constructed or acquired, wheresoever situated, including main lines, branches, extensions and acquisitions, together with all the railways, ways and rights of way, track, rails, bridges, viaducts, culverts, fences and structures of every kind; all depots, station houses, engine houses, car houses, wood houses, machine shops, water tanks, and all other buildings, together with the lots, or parcels of land on which each and all are or may be erected, and all locomotives, tenders, passenger, baggage, mail, freight, hand and other cars, and all other rolling stock and equipment; all machinery, tools, implements, fuel and materials; all furniture, maps, books of account, vouchers, receipts and assets of every kind; all leasehold premises and leases, income, tolls, rents, issues, profits, reversions and remainders; all which herein specified recited premises and property, and all other real and personal property now or at any time belonging, or to belong to said company, with all the present and future franchises and chartered rights, privileges and immunities, which now do or may at any time belong to or appertain to said company, including the franchise to be a corporation.

But it is understood that the lands which have been any may be acquired by said company from the State of Texas, and all other lands which have been or may be acquired, by donation or otherwise, except those acquired for some of the purposes hereinbefore

specified and used in connection with said railway, or the operation thereof, are not hereby conveyed, nor intended so to be.

To HAVE AND TO HOLD, all and singular, the said railways, premises, property and franchises, hereby conveyed, or intended to be, unto the said Farmers' Loan and Trust Company, of the second part, or its successor, as hereafter provided, in trust for the owners and holders of said bonds, and any of them, subject to the terms and stipulations of said bonds, and the interest coupons thereto annexed, and to the provisions of the charter of said company, and also subject to the possession and management of said party of the first part and its assigns, so long as it or they shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture.

And in case the said Gulf, Colorado & Santa Fe Railway Company shall fail to pay the principal, or any part thereof, or the whole of the interest on all said bonds, when the same shall become due and payable according to the tenor thereof, and if such default
25 shall continue six months after such payment has been demanded, then and thereupon the principal of all said bonds hereby secured shall be and become immediately matured; due and payable, and the said trustee, or its successor in this trust, if the said default still continues, may, and upon the request of the holders of one-half of the said bonds then outstanding, and upon receiving suitable indemnity against risk and expenses, shall take actual possession of said railroad, and of all and singular the premises, rights and privileges herein conveyed, and personally, or by agents or attorneys, shall manage and operate said railway premises, property, etc., and receive all the tolls, freight, income, rents, issues and profits therefrom, together with all the books, papers, records, accounts, assets and monies of said company, for the purpose of paying equally the said bonds issued under this mortgage, first defraying out of the same all the expenses of operating the road, and its needful repairs or replacements, and all the expenses of the execution and management of this trust, or the said party of the second part and its successors in said trust, may in their discretion, if said default is still continuing, and shall, on the written request of the holders of at least one-half of the bonds then unpaid and outstanding, and upon receiving suitable indemnity against risk and expenses, cause all and singular the said mortgaged property, appurtenances, franchises, rights and privileges to be sold all together and in bulk as an entirety, before the county court-house door, in the city of Galveston, giving at least ninety days' notice of the time, place and terms of such sale by publishing the same once in each week during the said ninety days, in a newspaper of good circulation in said city, and in one or more newspapers of the city of New York, and upon receiving the purchase money therefor, shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which sale and conveyance shall be a bar against the party of the first part, its successors and assigns, and all persons claiming under them, of all right, interest or claim in or to said premises so sold, or any part thereof, forever, and the receipt of

said trustee shall be a full and sufficient discharge of said purchasers thereof, who shall not be liable, or in any way bound, to see said purchase money applied to this trust, or in any manner answerable for its loss or misapplication, and the said trustee shall, after deducting from the proceeds of said sale the cost and expenses thereof, and of managing said property, if the same has been in his possession, and all payments for taxes, assessments and counsel fees, and also a commission to said trustee for said sale, apply the proceeds to the payment of the principal and interest of said bonds in full; or should the same not be sufficient for such full payment, then to the equal pro rata payment thereof, and if there be residue of such proceeds, they shall pay the same to said party of the first part; but the said trustee may, in its discretion, instead of taking possession of said property, or selling the same, proceed by the ordinary methods of foreclosure and sale, under the decree of a competent court, and nothing herein contained shall be construed as limiting the right to apply to such court for such relief, or for the usual relief in the course of such proceedings. The said party of the first part binds itself peaceably to surrender all such premises, property and rights to said trustee on its demand as aforesaid, and to the purchaser thereof, immediately, and hereby expressly waives and agrees that it will not take the benefit or advantage of any valuation, appraisement, extension or relief laws; and the actual possession of the property shall not be necessary to the exercise of the power of sale by the trustee and to the validity and full effect of the same, and the pur-
26 chaser shall have full right immediately to enter into and take possession of the same.

In the purchase of said property and premises upon a sale made either by the court, under decree of foreclosure, or by the trustee, bondholders, or the trustee in their behalf, being the highest bidders, shall have equal rights of purchase with all other persons, in the same manner as if they were not interested; and the bonds of said company and matured coupons thereto, secured by this mortgage, shall be received at such sale as cash, for the amount of cash which would be payable on such bonds and coupons out of the proceeds of the sale.

It is further expressly provided, that the recital in the conveyance by the trustee to the purchaser, shall be full evidence of the matters therein stated, and no other proof shall be requisite of default in the payment of said bonds or coupons, or of request by a specific number or proportion of the holders of the said bonds for the enforcement of this trust, or of the due authority of the persons or party acting in any and every matter as the legal representative of said party of the second part, or of the due appointment and authority of any successor trustee acting, or of the advertisement of sale, or any particular thereof, and all prerequisites to said sale shall be presumed to have occurred, or to have been performed.

In case of the refusal or inability to act from any cause, of the trustee named herein, or any successor trustee, the holders of the majority of said bonds then outstanding may, by certificate signed by them and served upon such trustee, or if none exist, then upon

one of the directors of the party of the first part, fill any and all vacancies of said trustee, and such certificate shall be full evidence of the rights and authority of such trustee who may be appointed to fill the first or any subsequent vacancy, inability or refusal to act; and such successor trustee shall immediately thereupon become vested with all the same powers, rights and interests, and charged with all the same duties and future responsibilities as if he or it (if a corporation) had been the original trustee, party of the second part, named in these presents. Wherever the word trustee is used in these presents it shall be construed to mean the trustee at the time being, whether original or substituted.

The said party of the second part, or trustee, may convey or release, upon the written request of the party of the first part, any land which the company may disuse or abandon by reason of any change of the location of any depot, station house, building or stock yard connected with the said railway, and may consent to such change, and such other changes in the location of the track, buildings or stock yards of said railway as they shall deem expedient, and may make and deliver any and all instruments necessary to carry the same into effect.

AND IT IS FURTHER COVENANTED AND AGREED between the parties hereto that two thousand one hundred and forty-four of the bonds to be issued and secured by the lien of this mortgage, and representing two million one hundred and forty-four thousand dollars of principal, shall be executed and delivered to the Farmers Loan and Trust Company, as trustee, to be certified and used by the said trustee, as follows, namely: To be exchanged for bonds already issued and outstanding under the provisions of the mortgage made by the railway company to the trustee, dated the first day of August, 1883. When all the bonds secured by said last named mortgage, and now outstanding, shall have been exchanged and shall have come into the hands of the trustee, the said second mortgage bonds, and all of them, shall
27 be canceled, and the mortgage securing the same shall be discharged; but until that shall be done, the bonds so secured by said mortgage of August 1, 1883, which may be received by the trustee in exchange for bonds issued under this mortgage, shall not be canceled, but shall remain a valid lien, and shall be retained by the trustee for the benefit of the holders of the bonds issued under this present mortgage, and shall be stamped by the trustee as so held by it. And so long as any of the bonds secured by the said mortgage of August 1, 1883, are outstanding and unexchanged, the railway company shall proceed, from time to time, when authorized by the terms of the said mortgage of August 1, 1883, so to do, to issue additional bonds under the said mortgage, until it shall have issued bonds to an amount equal in all to those which it may have issued under the provisions of this present mortgage; but in no case shall it issue, and it hereby covenants and agrees never to issue more bonds under the said mortgage of August 1, 1883, than eight bonds to each mile of main track and branches. All the bonds which the railway company may hereafter issue under the provisions of the mortgage of August 1, 1883, shall be deposited with

the trustee, and shall be held by it as additional security for the holders of the bonds secured by these presents until all the bonds secured by the mortgage of August 1, 1883, shall have been exchanged for bonds secured by these presents; and then, and when such exchange shall have been fully completed, the mortgage of August 1, 1883, and all the bonds secured thereby, shall be canceled and discharged by the trustee.

AND IT IS FURTHER COVENANTED AND AGREED by the party of the first part that it will well and truly pay the sums of money in the said bonds, and in each and all of them mentioned, together with the semi-annual interest due and to become due thereon, at the time and in the manner and at the places specified therein; and, further, that it will well and truly pay, or cause to be paid, all taxes, charges, rates, levies and assessments imposed, assessed or levied, or which hereafter may be imposed, assessed or levied, upon the premises and property hereby mortgaged, conveyed and assigned, or intended so to be, or any part thereof, and shall and will, at its own proper cost, expense and charge, do, or cause to be done, all acts and things necessary and proper to be done or performed in order to preserve and keep valid and intact this lien or encumbrance upon, all and singular, the property and premises above described.

AND IT IS FURTHER COVENANTED AND AGREED by the party of the first part to and with the trustee, that it will, from time to time, and at all times upon reasonable request, make, execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law for the better assuring unto the trustee, upon the trusts and for the purposes herein expressed or intended, all and singular, the property of every sort and description hereby mortgaged and conveyed in trust, or appearing, purporting or intended so to be, now owned or possessed by or vested in the said railway company, or that may hereafter be owned, possessed, acquired or vested in the railway company, as by the trustee or its counsel learned in the law shall be reasonably devised, advised or required.

IT IS FURTHER PROVIDED that the party of the second part, or trustee, who may act under this conveyance, may take such legal advice and employ such assistance as may be necessary, in its judgment, to the proper discharge of its duties, and shall be entitled to receive reasonable compensation for every labor or service
28 performed by it in the discharge of this trust, and for all its reasonable expenses and disbursements; and it is expressly provided and stipulated that the compensation to the trustee who may act in making a sale of the mortgaged premises herein conveyed, for making such sale and executing a deed thereunder, shall be one-half of one per cent. on the proceeds of such sale.

The trustee shall be under no obligation to recognize any person or persons, firm or corporation, as holder or holders, owner or owners, of one or more of the bonds secured thereby, or to do, or refrain from doing, any act pursuant to the request or demand of any person or persons, firm or corporation, professing or claiming to be such holder

or holders, until such supposed holder or holders shall produce the said bonds and deposit the same with the Farmers Loan and Trust Company, and shall also indemnity and save harmless the trustee, to its full satisfaction, from any and all costs, expenses, outlays and counsel fees and other reasonable disbursements, for which it may become liable or responsible, on proceeding to carry out such request or demand, and for its reasonable and proper compensation in that behalf. Should any suit or other proceedings be brought in any court against the trustee, as trustee under this indenture, or by reason of any matter or thing connected with the trusts hereby created, or the premises affected hereby, the trustee shall thereupon notify the railway company of the fact by delivering such notice at the office of the railway company; and the trustee shall thereupon be under no obligation to enter an appearance by counsel, or in any way to appear in and defend the said suit or other proceedings until indemnified to its satisfaction for so doing; but it may appear in and defend the same without indemnity if it shall elect so to do, and be compensated therefor from the trust fund. In case at any time it shall be necessary and proper for the trustee to make any investigation respecting any fact or facts, preparatory to taking or not taking any action, or doing or not doing anything, as such trustee, the certificate of the president of the railway company under the corporate seal, attested by the affidavit of one or more directors of the said corporation, shall be sufficient evidence of such fact or facts to protect the trustee in any action it may take or anything it may do or refrain from doing, by reason of the supposed existence of such facts.

It shall be no part of the trustee's duty to have this indenture recorded or filed as a chattel mortgage, or to any act or thing or give notice or continue notice in any way of the lien of these presents.

The trustee shall only be responsible for reasonable diligence in the management of the trust, and shall not be answerable in any case for the act or default of any agent, attorney or employé selected with reasonable discretion.

This deed shall take effect when signed by the trustee, party of the second part, in token of its acceptance of the trust hereby created, the mode or form of signature to this and to all instruments which may be executed by said party of the second part under this trust, may be made and all acts by it may be performed by such official or agent as may conform to its charter or by-laws, resolutions or usage in that respect, and all signatures of acts by it shall be taken and received as in conformity thereto, without any special proof thereof.

IN WITNESS WHEREOF, the Gulf, Colorado & Santa Fe Railway Company, party of the first part, in pursuance of the authority conferred upon it by law, and of proceedings of its board of directors, and of the meeting of its stockholders, called according to law, and held at its office in the city of Galveston, on the fifteenth day
29 of June, 1885, and of a resolution passed thereat by a vote of the holders and owners of more than two-thirds of all its capital stock, and of the further resolution of its board of directors

therefor, on the same day, has caused this indenture to be subscribed as its act and in its name, by the president and secretary, and the corporate seal of said company to be affixed hereto; and the party of the second part, for the purpose of signifying its acceptance of the trust hereby created, has also caused the same to be subscribed as its act, and in its name, by its president and its corporate seal to be affixed hereto, the date first above written.

VIIa. That under the terms of said second mortgage there have been issued by the Gulf Company, certified, as therein required, by your orator, and, as your orator is informed, believes and therefore alleges, sold to purchasers in good faith, or exchanged for bonds issued under the previous second mortgage (since cancelled) therein recited, the proceeds whereof as well as of said bonds which were so taken up by exchange which had been likewise sold to purchasers in good faith, have been paid into the treasury of the Gulf Company and used by it for purposes for which its charter authorized it to issue and sell bonds, and are now outstanding, unpaid, held and owned by purchasers in good faith, 8461 second mortgage bonds of the Gulf Company, in the sum of one thousand ($1,000) dollars each, with interest at six per cent. per annum, payable on the first days of April and October of each year, and which said bonds will mature on the first day of October, 1925, being at the rate of eight thousand ($8,000) dollars per mile for each mile of road constructed or purchased and owned and operated by the Gulf Company.

VIII. Your orator is informed, believes and therefore alleges, that the execution of all of said mortgages and the issuance of said first and second mortgage bonds and sale thereof were duly authorized by a vote of two-thirds of the Gulf Company's directors, sanctioned by a majority of its stockholders at regular meetings, at each of which thirty days' notice was given.

IX. Your orator is informed, believes, and therefore alleges, that during the five years ending June 30, 1891, the Gulf Company has been unable, under the circumstances, tariffs and conditions heretofore existing, to earn enough from the operation of its road to pay interest on its bonds, and the following is a true and correct statement of the earnings and operating expenses, interest and fixed charges, and amounts expended by the Gulf Company for permanent improvements on the old or constructed line of its road during said period of five years, and said statement also shows the deficit for each of said five years of the earnings of the Gulf Company's railroad, to meet the interest on its bonds and other fixed charges:

Statement Showing Results of Operations by Years Ending June 30, from July 1, 1886, to June 30, 1891.

	1887.	1888.	1889.	1890.	1891.	Total from July 1, 1886, to June 30, 1891—5 years.
Gross earnings	$2,558,051 98	$3,213,312 07	$3,636,393 48	$4,409,927 67	$4,868,613 46	$18,686,298 66
Operating expenses	2,117,452 05	2,824,783 75	3,180,267 17	3,517,992 65	4,061,835 89	15,702,331 51
Net earnings	$440,599 93	$388,528 32	$456,126 31	$891,935 02	$806,777 57	$2,983,967 15
Add:						
Miscellaneous income	383,750 92	524,081 31	4,279 41	.....	.....	912,111 64
	$824,350 85	$912,609 63	$460,405 72	$891,935 02	$806,777 57	$3,896,078 79
Deduct fixed and obligatory charges:						
Taxes	$79,049 42	$54,364 64	$81,619 17	$99,536 55	$99,322 46	$404,992 24
Rentals	.....	.....	10,352 25	25,022 96	99,182 71	134,557 92
Interest on bonds	893,307 92	1,155,452 98	1,368,974 71	1,386,900 00	1,396,560 00	6,201,194 71
Other charges—interest, discount, etc.	25,272 94	22,492 36	149,945 11	20,624 08	9,459 21	225,793 70
Total charges	$997,630 28	$1,232,309 98	$1,610,891 24	$1,532,083 59	$1,604,524 38	$6,966,538 57
Deficit	$173,279 43	$319,700 35	$ 50,485 52	$631,148 57	$797,746 81	3,070,459 78
Improvements—old line:						
Construction and equipment	$666,068 46	$246,798 09	$259,489 84	$140,491 80	$1,331,775 95	$2,574,623 74
Total deficit	$839,347 89	$566,498 44	$1,309,975 36	$1,580,640 37	$2,129,522 76	$5,645,083 52

JOHN H. REAGAN ET AL. vs.

32 Your orator is informed, believes, and therefore alleges, that said amount of $2,574,624.74 so expended during the said period on the old or constructed line of road were chiefly improvements of such character as are ordinarily paid out of the earnings of a railroad. That the Gulf Company now owes a floating debt, including unpaid interest coupons, of $3,348,049.97, incurred by failure of its earnings, as shown by said statement, to pay its interest and fixed charges and said amounts so expended for improvements. That the total amount of the stock and bonds of the Gulf Company outstanding aggregate the sum of $24,310 per mile of its road constructed and operated, which amount, and more, its railroad and property incidental thereto, is now reasonably worth, and your orator verily believes it could not now be duplicated for said amount. That the bonds of the Gulf Company were sold at the highest market price that they could command at the various dates of their sale, and taken as a whole, the sales of said bonds would average at or about their par value, the first mortgage bonds having been sold on an average of above par, the first and second mortgage bonds, taken together, having been sold on an average of above 95 cents on the dollar.

That all of the allegations of the succeeding paragraphs of this bill, numbered X to XXVI, both inclusive, are made upon information and belief, and your orator is informed and believes and hence alleges that each and all such allegations and averments are true.

X. That on or about the 21st day of June, 1891, the General Freight Agent of the Gulf Company received, through the United States mail, a communication as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *June 20, 1891.*

Mr. General Freight Agent G. C. & S. F. Ry.

DEAR SIR: In accordance with the requirements of section 4 of the act creating the Railroad Commission of Texas, passed at the regular session of the Twenty-second Legislature and approved April 3, 1891, the Railroad Commission of Texas will, on Monday, July 6, 1891, begin, and continue from day to day, until completed, the classification and subdivision of all freight and property of what-

33 soever character that may be transported on the railroads of the State, into such general or special classes or sub-divisions as may be found necessary or expedient, and the fixing for each class or sub-division of freight a reasonable rate for each railroad subject to this act for the transportation of each of said sub-divisions or classes; also, that at the above named time and place a special classification, and rates of charges thereon, of cotton, grain, lumber and salt will be made. Your attention is also called to section 8 of the act aforesaid, which provides that in all cases where the rates shall not have been fixed by the commission no changes shall be made, except after ten days' notice to and consent of the Commission, therefore the changing of any rates in force June 10, 1891, except after notice as above provided and the consent of the Commission, is unlawful.

Please acknowledge receipt of this notice and oblige.

JOHN H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

5—1170

Shortly thereafter there appeared in the newspapers of the State a statement, authorized by said Commission, that the Commission invited the presence of representatives of towns and cities, boards of commerce or individuals who might desire to present any matter or complaint to the said commission to be present on and after July 6, 1891.

The Gulf Company did not construe said notice of June 20, 1891, as a legal notice to appear before the said Commission for the purpose of a hearing on any rates proposed by the said Commission to affect it, but supposed that it was the intention of the said Commission to have a general hearing of the representatives of the Gulf Company and of other railway companies and of citizens in general as to the general condition prevailing, and in pursuance of such idea, W. H. Masters, General Freight Agent of the Gulf Company, and J. W. Terry, an attorney of the Gulf Company, appeared at Austin on July 6, 1891, and for several days thereafter, and participated in the general discussions that were carried on by various parties before said Commission and by the members of said Commission, but were not informed until the second or third day of the session that the Commissioners considered that they had given all the notice that they were required by the law to give, before having the power to establish rates, the only notice given being the one aforesaid.

That on or about the tenth day of July, 1891, the said Commissioners propounded certain questions in writing, for the purpose of eliciting information of a general nature, to the representatives
34 of the railroad companies present, and the session or meeting was then adjourned until on or about the 15th day of July, 1891, to give the said representatives an opportunity to procure the necessary data to answer such questions. That on or about the 15th day of July, 1891, the said representatives of the Gulf Company and the representatives of other railroads of Texas again appeared before the said Commission and submitted answers to the questions propounded by said Commission, all of which were of a very general nature, as were the questions, as for instance, the question as to the average cost of ocean carriage, etc., and for two days general discussion was again engaged in between said Commission and various parties present, including the representatives of your orator and of the other railroads of Texas.

At this time the Gulf Company submitted statements to said Commission showing its receipts, expenses and deficits since the 1st day of January, 1888, to May 30, 1891, which showed substantially the same results for said period as are shown by the statement hereinbefore inserted, and at the said time, as well as at the previous sessions, commencing July 6, 1891, it invited and requested the said Commission to appoint experts to examine its books in verification of such statements and to hear evidence or adopt any other appropriate means of ascertaining the truth of the matters represented by its representatives, and at said time its representatives protested with the said Commission that no rates should be established which would effect any reduction in its revenue. That on or about the 16th day

of July, 1891, the said Commission dismissed the representatives of the Gulf Company and other railway representatives, indicating that nothing further was then required of them, and that if the said Commission desired a further attendance or further hearing of said representatives, that they, the said representatives, would be so notified by the said Commission.

XI. That on or about the 30th day of July, 1891, the general freight agent of the Gulf Company received through the United States mail a document, a true copy of which is as follows, and which will be hereafter called "Proposed Commodity Tariff No. 1":

35 OFFICE OF THE RAILWAY COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 29, 1891.

DEAR SIR: The schedule rates on the commodities herein named is proposed by the Railroad Commission of Texas to the general freight agents of the several railroads in Texas for their consideration and such suggestions as they may see proper to make. Action will be had on this schedule August 5, and all communications relating thereto must be received by that date to receive attention of the Commission. JOHN H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Commodity Tariff No. 1.

To and from all stations in Texas, whether located on one or more railroads.

APPLYING ON

Wheat, Corn, Rye, Barley, Oats, Flour, Meal, Bran, Mill Feed, and Mill Stuffs, in car loads, straight or mixed; minimum weight, 20,000 pounds. (For less than car-load rates add 50 per cent to car-load rate.)

Hay in car loads, minimum weight 17,000 pounds. Narrow guage roads, 10,000 pounds. (For less than car-load rates add 50 per cent to car-load rate.)

Salt in car loads, minimum weight 20,000 pounds. (For less than car-load rates add 50 per cent to car-load rate.)

The following roads and parts of roads must add ten per cent to the rates herein fixed: Fort Worth & Denver City R. R. between Washburn & Texline, and Washburn and Panhandle; Galveston, Harrisburg & San Antonio R. R. between San Antonio and El Paso, Spofford Junction to Eagle Pass, Stella to Harrisburg, Smith Junction to LaGrange; Gulf, West Texas & Pacific R. R.; Houston East & West Texas R. R.; New York, Texas & Mexican R. R.; Sabine & East Texas R. R.; Texas-Mexican R. R.; Texarkana & Forth Smith R. R., Texas & Pacific R. R. between Colorado City and El Paso; Southern Kansas R. R.; Texas, Sabine Valley & Northwestern R. R. between San Antonio and Laredo, Houston and Columbia, Phelps and Huntsville, Missouri, Kansas & Texas between Trinity and Colmesneil; Aransas Pass R. R. between Skidmore & Kleberg.

This tariff does not apply on the following railroads: Brownsville & Gulf R. R., Galveston & Western R. R., Lake Creek R. R., Paris & Great Northern R. R., Paris, Marshall & Sabine R. R., Rio Grande R. R., Rio Grande & El Paso R. R., Texas-Mexican Northern R. R., Rio Grande & Eagle Pass R. R.

Distances	Corn, Wheat, Rye, Barley, Oats, Bran, Millfeed and, Mill-stuffs & Hay.	Flour & Meal, in sacks or barrels.	Salt, in sacks or barrels.
10 miles and under	5	6	6
10 miles and under 20	5½	6½	6½
20 miles and under 30	6	7	7
30 miles and under 40	6½	7½	7½
40 miles and under 50	7	8	8
50 miles and under 60	7½	8½	8½
60 miles and under 70	8	9	9
70 miles and under 80	8½	9½	9½
80 miles and under 90	9	10	10
90 miles and under 100	10	11	11
100 miles and under 110	10½	11½	11½
110 miles and under 120	10½	12	12
120 miles and under 140	11	12½	12½
140 miles and under 160	11½	13	13
160 miles and under 180	12	13½	13½
180 miles and under 200	12½	14½	14½
200 miles and under 220	13	15	15
220 miles and under 240	13½	15½	15½
240 miles and under 260	14	16	16
260 miles and under 280	14½	16½	16½
280 miles and under 300	15	17	17
300 miles and under 320	15½	17½	17½
320 miles and under 340	16	18	18
340 miles and under 360	16½	18½	18½
360 miles and under 380	17	19	19
380 miles and under 400	17½	19½	19½
400 miles and under 420	18	20	20
420 miles and under 440	18½	20½	20½
440 miles and under 460	19	21	21
460 miles and under 480	19½	21½	21½
480 miles and under 500	20	22	22
All distances over 500	20	22	22

At all competitive points the longer lines from such points to the points of destination in competitive territory may charge a rate not lower than that fixed by the distance over the shortest line between such points without effecting rates at the intermediate points. The rate prescribed in this tariff shall apply equally whether the freight is carried over one line or two or more connecting lines; that is, the rate shall be regulated by the entire distance between the points of shipment and point of destination.

That on or about 3d day of July, 1891, the General Freight Agent of the Gulf Company received through the United States mail a document, hereafter called "Proposed Commodity Tariff No. 2," a true copy of which is as follows:

37 OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *July 30, 1891.*

DEAR SIR—The schedule of rates herein proposed is submitted

for the consideration of the general freight agents of the severa railroads in Texas. Such suggestions in relation thereto as they desire to make must reach this office by August 6th to receive attention by the Commission.

JOHN H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Commodity Tariff No. 2.

Applying on Cotton in Bales, Flat and Compressed, actual weight in any quantity, between all stations in Texas.

Rate in Cents Per One Hundred Pounds.

Distance.	Cents.	Distance.	Cents.
10 miles and under	11	220 miles and over 210	41
15 miles and over 10	12	230 miles and over 220	42
20 miles and over 15	13	240 miles and over 230	43
25 miles and over 20	14	250 miles and over 240	44
30 miles and over 25	15	260 miles and over 250	45
35 miles and over 30	16	270 miles and over 260	46
40 miles and over 35	17	280 miles and over 270	47
45 miles and over 40	18	290 miles and over 280	48
50 miles and over 45	19	300 miles and over 290	49
55 miles and over 50	20	310 miles and over 300	50
60 miles and over 55	21	320 miles and over 310	51
65 miles and over 60	22	330 miles and over 320	52
70 miles and over 65	23	340 miles and over 330	53
75 miles and over 70	24	350 miles and over 340	54
80 miles and over 75	25	360 miles and over 350	55
85 miles and over 80	26	370 miles and over 360	56
90 miles and over 85	27	380 miles and over 370	57
95 miles and over 90	28	390 miles and over 380	58
100 miles and over 95	29	400 miles and over 390	59
110 miles and over 100	30	410 miles and over 400	60
120 miles and over 110	31	420 miles and over 410	61
130 miles and over 120	32	430 miles and over 420	62
140 miles and over 130	33	440 miles and over 430	63
150 miles and over 140	34	450 miles and over 440	64
160 miles and over 50	35	460 miles and over 450	65
170 miles and over 160	36	470 miles and over 460	66
180 miles and over 170	37	480 miles and over 470	67
190 miles and over 180	38	490 miles and over 480	68
200 miles and over 190	39	500 miles and over 490	69
210 miles and over 200	40	And over 500	70

Fractions of less than 100 pounds must be charged for at the rate per pound fixed for 100 pounds.

Cotton may be stopped in transit for compressing at the nearest compress in the direction in which the shipment is destined.

38 When shipments to compresses are made in any other direction, the local rate to the compress must be added to the rate from the rate to the compress to point of destination.

All roads excepted from Commodity Tariff No. 1 are excepted in this tariff. Ten per cent. additional also applied.

That on or about the 1st day of August, 1891, the general freight agent of the Gulf Company received through the United States mail a document hereinafter called "Proposed Commodity Tariff No. 3," a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *July 31, 1891.*

DEAR SIR—The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they may desire to make must reach this office by August 7 to receive attention from the Commission.

JOHN H. REAGAN, *Chairman.*
J. J. ARTHUR, *Secretary.*

Commodity Tariff No. 3.

Applying on Lumber and Shingles in Car Loads, Straight or Mixed, Minimum Weight 20,000 Pounds.

Rate in Cents Per One Hundred Pounds.

DISTANCE.	RATE.	DISTANCE.	RATE.
20 miles and under	5	250 miles and over 200	14½–15
40 miles and over 20	7–8	300 miles and over 250	16–19
60 miles and over 40	8–10	350 miles and over 300	17½–20
80 miles and over 60	9–12	400 miles and over 350	19–21
100 miles and over 80	10–14	450 miles and over 400	20–22
150 miles and over 100	11½–16	500 miles and over 450	21–23
200 miles and over 150	13–17	All over 500 miles	22½

Roads excepted in commodity tariff No. 1 are excepted in this, and roads adding ten per cent. to rate in said tariff will add ten per cent. to tariff herein specified.

The rule in relation to long and short haul laid down in commodity tariff No. 1 also applies in this.

That after the receipt of the proposed commodity tariffs numbered 1, 2 and 3, by the said general freight agent, J. W. Terry, attorney of the Gulf Company, telegraphed the chairman of said Commission, Hon. John H. Reagan, requesting him to extend the time of hearing on said proposed commodity tariffs Nos. 1, 2 and 3, for ten days,
39 protesting in said telegram that the time allowed by the Commission was not sufficient to enable the railroads of the State, including the Gulf Company, to procure the necessary data to fully and fairly present their and its objections to said proposed tariffs, and which said request was refused by a telegram from the said Reagan, and thereafter the said Terry again telegraphed the said Reagan requesting the Commission to grant the said extension of ten days, and suggesting that if it would do so, that he would undertake to get the railway companies to agree to waive ten of the twenty days' time which the commission law requires to elapse after the issuance of a tariff by the Commission before the same shall take effect, which request, in that shape, was again declined by the said Commission, through the said Reagan as chairman. That the said representatives of the Gulf Company, among representatives of other railroads and citizens generally, again appeared before the said Com-

mission, at a general meeting, on the fifth, sixth and seventh days of August, 1891, and as well as they could, presented objections to the said proposed tariffs, protesting against their adoption on the ground that they would involve a serious and disastrous reduction in the revenues of the Gulf Company and the other railway companies, and protesting to the said Commission that the Gulf Company was already far short of earning enough to meet its fixed charges, and hence any further reduction of its revenue would be illegal and unjust.

That the proceedings hereinbefore alleged constituted all of the purported hearings and all of the notice or notices ever given or granted to the Gulf Company by said Commission. That unless the appearance in said general way before the said Commission of the Gulf Company's general freight agent and attorney can be so construed, it never in any way waived any notice or notices of any hearing or hearings required by the constitution of the United States or the State of Texas, or the commission law to be given by said Commission.

That on or about the 7th day of August, 1891, the said Commission dismissed the representatives of the Gulf Company and the other railway companies present, and stated that their presence was no longer required or desired, and if said Commission desired anything further of or from them they, the said Commission, would communicate with the representatives of the Gulf Company and the other railway companies, whereupon the representatives of the Gulf Company left the city of Austin, and have never since had any notice from said Commission to be present at any hearing, and the Gulf Company has not since then been present or represented before the said Commission at any hearing, if any has been held.

XII. That on or about the 14th day of August, 1891, the general freight agent of the Gulf Company received by United States mail a document hereinafter called "Commodity Tariff No. 1," a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *August 13, 1891.*

Due and legal notice as provided by the act of the Twenty-second legislature of Texas, approved April 13, 1891, establishing a railroad commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and said work would continue from day to day until finished, and the legally-authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity

Tariff No. 1, do fix and establish the rates therein set forth, which said rates go into effect on all railroads in the State of Texas on shipments of freight herein named from and to points within said State on and after September 9, 1891, with the exceptions and modifications herein specified as to certain railroads and parts of railroads, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Commodity Tariff No. 1.

Issued by the Railroad Commission of Texas and applying on the following commodities:

Wheat, Corn, Rye, Barley, Oats, Bran, Mill Feed and Mill Stuffs, car loads, straight or mixed; minimum weight 20,000 pounds.

Flour and meal in sacks or barrels and hominy and grits in car loads, straight or mixed; minimum weight 20,000 pounds.

Hay in car loads; minimum 17,000 pounds. Narrow gauge roads, 12,000 pounds.

Salt in car loads; minimum weght 20,000 pounds.

Effective September 9, 1891. Cancel all existing tariffs on above-named commodities.

41

Rate in Cents per 100 Pounds.

Distance.	Wheat, Corn, Rye, Barley, Oats, Bran, Milfeed, Millstuff & Hay.	Flour & Meal in sacks or bbls., Hominy & Grits.	Salt in sacks or barrels or in bulk or Rock Salt
5 miles and under	5	5	6
10 miles and over 5	5	5	6
15 miles and over 10	5½	5½	6½
20 miles and over 15	6	7	7
25 miles and over 20	6	7	7
30 miles and over 25	6½	7½	7½
35 miles and over 30	6½	7½	7½
40 miles and over 35	7	8	8
45 miles and over 40	7½	8½	8½
50 miles and over 45	8	9	9
55 miles and over 50	8	9	9
60 miles and over 55	8½	9½	9
65 miles and over 60	8½	9½	9½
70 miles and over 65	9	10	9½
75 miles and over 70	9	10	10
80 miles and over 75	9½	10½	10
85 miles and over 80	9½	10½	11
90 miles and over 85	10	11	11
95 miles and over 90	10	11	11½
100 miles and over 95	10½	11½	11½
105 miles and over 100	10½	12	12
110 miles and over 105	11	12½	12
115 miles and over 110	11	12½	12½

Rate in Cents per 100 Pounds—Continued.

Distance.	Wheat, Corn, Rye, Barley, Oats, Bran, Mill feed, Millstuff & Hay.	Flour & Meal in sacks or bbls., Hominy & Grits.	Salt in sacks or barrels or in bulk, or Rock Salt.
130 miles and over 115	11½	13	12½
135 miles and over 120	11½	13	13
140 miles and over 125	12	13½	13
145 miles and over 130	12½	14	13
150 miles and over 135	12½	14	13
155 miles and over 140	13	14½	13½
160 miles and over 145	13	14½	13½
165 miles and over 150	13¼	15	13½
170 miles and over 155	14	15½	13½
175 miles and over 160	14	15½	14½
180 miles and over 165	14½	16	14½
185 miles and over 170	14½	16	14½
190 miles and over 175	15	16	14½
195 miles and over 180	15	16½	15
200 miles and over 185	15	16½	15
210 miles and over 190	15½	17	15
220 miles and over 200	16	17½	15½
230 miles and over 210	16	17½	15½
240 miles and over 220	16	17½	16½
250 miles and over 230	16½	18	16
260 miles and over 240	16½	18½	16½
270 miles and over 250	16½	18½	16½
280 miles and over 260	16¾	18½	17
290 miles and over 270	17	19	17
300 miles and over 280	17	19	17½

42

310 miles and over 290	17	19	17½
320 miles and over 300	17	19	18
330 miles and over 310	17¼	19¼	18
340 miles and over 320	17½	19½	18½
350 miles and over 330	17½	19½	18½
360 miles and over 340	17¾	19½	19
370 miles and over 350	18	20	19
380 miles and over 360	18	20	19½
390 miles and over 370	18	20	19½
400 miles and over 380	18	20	20
410 miles and over 390	18¼	20¼	20
420 miles and over 400	18	21	20½
440 miles and over 420	20	22	21
460 miles and over 440	21	23	21½
480 miles and over 460	22½	25	22
500 miles and over 480	25	27	22
All distances over 500	25	27	22

At all points where railroads intersect, or meet at the same town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freights on the shortest lines between such points, without affecting the rates to be charged at intermediate points on said longest line or lines of road.

When any freight included in this tariff shall be carried over two or more railroads or parts of railroads not under the same control, the rate shall be determined by adding together the charges on the several railroads or parts of railroads, as prescribed in this tariff, for the respective distances such freight is carried over each and deducting from the sum 20 per cent; *provided*, that the rate thus obtained shall in no case exceed the maximum rate provided for in the tariff. The joint rate thus ascertained may be divided between roads over which freight is transported in such proportion as may be agreed upon between such roads.

All connecting railroads which are under the management and control by lease, ownership or otherwise of one and the same company shall for the purposes of transportation, in applying this tariff, be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road.

The following named railroads or parts of railroads may, in their discretion, add 10 per cent to the rates herein prescribed. Railroads availing themselves of this privilege must file with the Commission a list of the stations at which the increased rate will be applied, and also instruct their agents at such stations to add 10 per cent. to the rates prescribed in this tariff.

Fort Worth & Denver City Railway between stations west of Childress to and including Texline, and the Washburn & Panhandle Branch; Wichita Valley Railroad; Galveston, Harrisburg & San Antonio Railroad between stations west of San Antonio
43 to and including El Paso, Spofford Junction to Eagle Pass inclusive; Gulf, West Texas & Pacific Railroad; Houston, East & West Texas Railroad; New York, Texas & Mexican Railroad; Sabine & East Texas Railroad; Texas-Mexican Railroad; Texas & Pacific Railroad west of Colorado City to and including El Paso; Southern Kansas Railroad; Texas, Sabine Valley & Northwestern Railway; Texas Western Railroad; International & Great Northern Railroad between stations west of San Antonio to and including Laredo, and Houston & Columbia Tap; Missouri, Kansas & Texas Railroad between Trinity and Colmesneil; Aransas Pass Railroad between Skidmore and Kleberg and San Antonio and Kerville.

This tariff does not apply on the following railroads: Brownsville & Gulf; Galveston & Western; Lake Creek, Paris & Great Northern; Paris, Marshall and Sabine Valley; Rio Grande; Rio Grande & El Paso; Rio Grande &, Eagle Pass; Texarkana & Fort Smith; Texas Trunk; Pecos Valley; Kildare & Linden.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 1, with the modifications and exceptions thereto and the rules governing the same, this day adopted by the Railroad Commission of the State of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 13th day of August, 1891.

J. J. ARTHUR, *Secretary.*

That on or about the 23d of August, 1891, the general freight agent of the Gulf Company received through the United States

mail a document hereinafter called "Commodity Tariff No. 2," a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN TEXAS, *August 22 1891.*

Same preamble as in Commodity Tariff No. 1, except where the words "the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 1," should read: "The subject of establishing rates on commodities named in the subjoined Commodity Tariff No. 2, do fix and establish the rates therein set forth, which said rate shall go into effect on all railroads in the State of Texas on shipments of cotton from and to points within said State, on and after the 14th day of September, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Commodity Tariff No. 2.

Issued by the Railroad Commision of Texas, applying on Cotton in Bales, compressed and uncompressed, actual weight in any quantity. Between all stations in Texas.

Effective September 14, 1891.

44

Rates in Cents Per Hundred Pounds.

Distances.	Rate.	Distances.	Rate.
10 miles and under	10	130 miles and over 125 miles	44
15 miles and over 10 miles	12	135 miles and over 130 miles	45
20 miles and over 15 miles	14	140 miles and over 135 miles	46
25 miles and over 20 miles	16	145 miles and over 140 miles	47
30 miles and over 25 miles	18	150 miles and over 145 miles	48
35 miles and over 30 miles	20	155 miles and over 150 miles	49
40 miles and over 35 miles	22	160 miles and over 155 miles	50
45 miles and over 40 miles	24	165 miles and over 160 miles	51
50 miles and over 45 miles	26	170 miles and over 165 miles	52
55 miles and over 50 miles	28	175 miles and over 170 miles	53
60 miles and over 55 miles	30	180 miles and over 175 miles	54
65 miles and over 60 miles	31	185 miles and over 180 miles	55
70 miles and over 65 miles	32	190 miles and over 185 miles	56
75 miles and over 70 miles	34	195 miles and over 190 miles	57
80 miles and over 75 miles	34	200 miles and over 196 miles	58
85 miles and over 80 miles	35	225 miles and over 200 miles	59
90 miles and over 85 miles	36	250 miles and over 225 miles	60
95 miles and over 90 miles	37	300 miles and over 250 miles	61
100 miles and over 95 miles	38	250 miles and over 300 miles	62
105 miles and over 100 miles	39	400 miles and over 350 miles	63
110 miles and over 105 miles	40	450 miles and over 400 miles	64
115 miles and over 110 miles	41	500 miles and over 450 miles	65
120 miles and over 115 miles	42	Over 500 miles	65
125 miles and over 120 miles	43		

Fractions of less than 100 pounds must be charged for at the rate per pound fixed for 100 pounds.

No additional charge allowed when cotton passes over more than one road.

On account of water competition roads are authorized to charge a rate not less than 10 cents per 100 pounds on cotton from Houston to Galveston.

At all points where railroads intersect or meet at the same town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

For the purpose of compressing, cotton may be concentrated at any compress in the direction in which it is to be shipped, but where it is shipped back out of the direction of its destination for the purpose of being compressed, it must be compressed at the nearest compress; provided, that it shall not be located away from any compress station where it is marketed to a compress at another station for compressing.

In all cases cotton so concentrated at a compress for the purpose of compressing, must pay the local rate from the point of shipment to the compress.

When such cotton is compressed and reshipped, the rate from the point from which it was originally shipped through to the point of destination shall be paid thereon and the local rate from such original point to the compress refunded to the shipper; provided, that when cotton is concentrated in an opposite direction from its final destination, only so much of the local charge shall be refunded as is necessary to make the rate from the point of concentration apply.

45 I hereby certify that the above is a true and correct copy of Commodity Tariff No. 2, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 22d day of August, 1891.

J. J. ARTHUR, *Secretary.*

That said Commodity Tariffs Nos. 1 and 2, if enforced, will produce a reduction in the revenue on the traffic of the Gulf Company's road in Texas and the Indian Territory as follows:

On Flour	22.4 per cent.
On Salt	24.0 per cent.
On Grain and Hay	12.4 per cent.
On Cotton	11.5 per cent.

And on the basis of the business for the year ending June 30, 1891, the reduction on said articles in dollars and cents will be, per annum, as follows:

On Flour	$3,157 90
On Salt	1,543 59
On Grain and Hay	3,032 93
On Cotton	66,115 90

That exclusive of Indian Territory business, on local traffic in the State of Texas, on the basis of the business ending June 30, 1891, the Gulf Company's loss per annum from said purported tariffs, if enforced, will be:

On Flour	$3,282 63, or 21.7 per cent.
On Salt	1,534 35, or 24.0 per cent.
On Grain and Hay	2,613 37, or 13.1 per cent.
On Cotton	57,720 61, or 11.3 per cent.

By section 4 of the act of Congress, approved July 4, 1884, granting the right to the Gulf Company to construct a road in the Indian Territory, it was provided: "That the said railway company shall not charge the inhabitants of said Territory a greater rate of freight than the rate authorized by the laws of the state of Texas for services or transportation of the same kind."

That in the foregoing statement of loss the amounts paid by the Gulf Company for compressing cotton are not included, the amounts
46 so paid having been deducted from its earnings in the detailed statement from which the foregoing results are made up. That if the said commission succeeds, as they are attempting to do, as hereinafter shown, in requiring the Gulf Company to pay the compressing on cotton, said company will sustain an additional loss by the tariffs and acts of said commission in the sum of $....., or more.

Your orator files herewith, marked "Exhibit B," a detailed statement showing the tonnage and earnings of the Gulf Company for the year ending June 30, 1891, from and to each station, of commodities embraced in the said Commodity Tariffs Nos. 1 and 2, and also showing what would have been its earnings had the said tariffs of the commission been in force during the said time, which said statement is verified as correct by the affidavit of the auditor.

XIII. That on or about the second day of September, 1891, the general freight agent of the Gulf Company received through the United States mail a document, which is hereinafter called Commodity Tariff No. 3, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
September 1, 1891.

Due and legal notice, as provided by the act of the 22d Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and defining rates of transportation on all freight and property of every kind, to be transported over railroads from point to point in said State, and that said work would be continued from day to day until finished, and the legally authorized agents or representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subject, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodi-

ty Tariff No. 3, do fix and establish a rate therein set forth, which said rate shall go into effect on all railroads in the State of Texas on shipments of lumber, laths and shingles, from and to points within said State, except as hereinafter mentioned, on and after the 23d day of September, 1891, with the regulations in relation thereto, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commission.*

47 *Commodity Tariff, No. 3.*

Issued by Railroad Commission of Texas, applying on Lumber, Laths and Shingles, in car loads, straight or mixed, minimum weight 24,000 pounds, between all stations in Texas, except as hereinafter mentioned.

Effective September 23, 1891.

Rates in Cents Per One Hundred Pounds.

10 miles and under	4	95 miles and over 90	13½
15 miles and over 10	4½	100 miles and over 95	14
20 miles and over 15	5	125 miles and over 100	15
25 miles and over 20	6	150 miles and over 125	16
30 miles and over 25	7	200 miles and over 150	17
35 miles and over 30	7½	250 miles and over 200	18
40 miles and over 35	8	300 miles and over 250	19
45 miles and over 40	8½	350 miles and over 300	20
50 miles and over 45	9	400 miles and over 350	21
55 miles and over 50	9½	450 miles and over 400	22
60 miles and over 55	10	500 miles and over 450	23
65 miles and over 60	10½	550 miles and over 500	24
70 miles and over 65	11	600 miles and over 550	25
75 miles and over 70	11½	650 miles and over 600	26
80 miles and over 75	12	700 miles and over 650	27
85 miles and over 80	12½	Over 700 miles	28
90 miles and over 85	13		

Exception No. 1.—Points on the Galveston, Harrisburg & San Antonio Railroad east of Beaumont, including Rockland and Sabine Pass Branch, to and including Orange, shall take the rate fixed from Beaumont by the mileage rate to all points in the State west of Houston.

Exception No. 2.—Points on the Houston East & West Texas Railway north of Valda, to and including Logansport, shall take the rate fixed from Valda by the mileage rate to all points in the State west of Houston.

Exception No. 3.—Points on the Missouri, Kansas & Texas Railway from Trinity, to and including Colmesneil, shall take the rate fixed from Trinity by the mileage rate to all points in the State north and west of Palestine and west of Houston.

Exception No. 4.—The rates now in force from points on the Galveston, Harrisburg & San Antonio Railway east of Houston to Houston, shall remain in force.

Exception No. 5.—The rates now in force from points on the

Houston East & West Texas Railroad north of Houston to Houston, shall remain in force.

The rates herein prescribed include the privilege of having lumber stopped at a planing mill for the purpose of planing on payment of an additional charge of $5 per car.

No additional charge allowed where freight described in this tariff passes over more than one road.

At all points where railroads intersect or meet at the same town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freights on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy
48 of commodity tariff No. 3 and the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 1st day of September, 1891.

J. J. ARTHUR, *Secretary.*

That said Commodity Tariff No. 3, if enforced, will cause a loss in revenue of your orator of 12,626.85 dollars per annum, or 6.5 per cent., as is fully explained in a detailed statement, verified as correct by the affidavit of the proper official of the Gulf Company, of the tonnage and earnings of the Gulf Company between the stations on its line on lumber, laths and shingles, for the year ending June 30, 1891, and what would have been such earnings under said commission tariff filed herewith, marked "Exhibit C."

That on the 12th day of September, 1891, the general freight agent of the Gulf Company received a telegram as follows:

AUSTIN, TEXAS, *September 12, 1891.*

W. H. MASTERS, *Galveston:*

Rate from all points in the State to Houston will be Galveston rate, less seven cents per hundred pounds, local rates from Houston to Galveston.

JOHN H. REAGAN, *Chairman.*

On the 14th day of September, 1891, said general freight agent received through the United States mail a document, hereinafter called "Circular No. 7," a true of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 12, 1891.

Circular No. 7.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 2, adopted August 22, 1891, and effective September 14, 1891, be modified and amended (as provided in section 8 of the commission law) as follows:

First.—The rate on cotton from all points in Texas to Houston shall be the rate from said points to Galveston, less 7 cents per hundred pounds.

Second.—The local rate on cotton from Houston to Galveston shall be 7 cents per hundred pounds.

The above modifications and amendments shall take effect on the 14th day of September, 1891, and remain in force and effect until canceled by the commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

49 I hereby certify that the above is a true and correct copy of the amendments and modifications to Commodity Tariff No. 2 this day adopted by the Railroad Commission of Texas, at the city of Austin, this the 12th day of September, 1891.

J. J. ARTHUR, *Secretary.*

The enforcement of said circular will produce an additional loss to the Gulf Company, the exact amount of which cannot now be ascertained.

That the Gulf Company never received any notice that the matters embraced in the said circular would be considered by the said Commission, and never had an opportunity to appear before the said Commission at any hearing concerning said matters.

XIV. That on or about the 13th day of September, 1891, said general freight agent received through the United States mail a document hereinafter called Commodity Tariff No. 4, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *September 12, 1891.*

Due and legal notice as provided by the act of the 22d Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that the said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies in pursuance of said notice having appeared before said Railroad Commission at its session and had a full hearing upon said subject, the said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 4, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of the commodities hereinafter named from and to points within said State on and after the 5th day of October, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Commodity Tariff No. 4.

Issued by Railroad Commission of Texas, and applying on Cotton Seed, Cotton Seed Hulls, Cotton Seed Meal, Ashes, Cake, Cotton Seed Oil, in car loads, between all stations in Texas. Minimum weight, 20,000 pounds.

Effective October 5, 1891. Cancels all existing tariffs on above named commodities.

50

Distances	Rates in cents per one hundred pounds. Cotton Seed in Carloads Straight.	Cotton Seed Hulls in Carloads Straight.	Cotton Seed Meal, Ashes and Cake in Sacks in Carloads Straight or Mixed.	Cotton Seed Oil in Barrels Carloads Straight.
5 miles and under	5	2½	4	4
10 miles and over 5	5	3	5	5
15 miles and over 10	6	3½	5½	5½
20 miles and over 15	7	4	6	6
30 miles and over 20	8	4½	7	7
40 miles and over 30	9	5	7½	8
50 miles and over 40	10	5½	8	9
60 miles and over 50	10½	6	8½	10
80 miles and over 60	11	6½	9	12
100 miles and over 80	11½	7	10	14
120 miles and over 100	12	7½	10½	16
140 miles and over 120	12½	8	11	18
160 miles and over 140	13	8½	11½	19
180 miles and over 160	13½	9	12	20
200 miles and over 180	14	9½	12½	21
220 miles and over 200	14½	10	13	22
240 miles and over 220	15	10½	13½	23
260 miles and over 240	15½	11	14	24
280 miles and over 260	16	11½	14½	25
300 miles and over 280	16½	12	15	26
320 miles and over 300	17	12½	15½	27
340 miles and over 320	17½	13	16	28
360 miles and over 340	18	13½	16½	29
380 miles and over 360	18½	14	17	30
400 miles and over 380	19	14½	17½	31
450 miles and over 400	19½	15	18	32
500 miles and over 450	20	15½	18½	33
Over 500 miles	20	16	19	34

At all points where railroads intersect or meet at the same town or city, from which freight shall be carried to the same points of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 4, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this 12th day of September, 1891.

J. J. ARTHUR, *Secretary.*

That said purported Commodity Tariff No. 4, as amended by Circular No. 12, shown on page 68 hereof, if enforced will cause a loss or decrease in the revenue of the Gulf Company as follows:

On Cotton Seed, $6,787.19, or 13.7 per cent.
On Cotton Seed Hulls, $1,392.93, or 32.3 per cent
On Cotton Seed Meal, $1,105.41; or 16.8 per cent.
On Cotton Seed Ashes, $ ....., or .....per cent.
On Cotton Seed Cake, $ ..... , or .....per cent
On Cotton Seed Oil, $ ....., or .....per cent.

51 That on or about the 17th day of September, 1891, said general freight agent received through the United States mail a document, hereinafter called Commodity Tariff No. 5, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *September 16, 1891.*

Due and legal notice, as provided by the act of the Twenty second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad in the State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day untill finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 5, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of wood, coal and coke, from and to points within said State on and after the 8th day of October, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

Commodity Tariff No. 5.

Issued by the Railroad Commission of Texas and applying on wood, coal and coke between all stations in Texas, in car loads, with minimum as follows: Wood, 8 cords per car; coal and coke, 20,000 pounds per car.

Effective October 8, 1891.

Rates in cents per cord on wood.

10 miles and under	$ 80	125 miles and over 100	$1 50
20 miles and over 10	85	150 miles and over 125	1 70
30 miles and over 20	90	175 miles and over 150	1 85
40 miles and over 30	95	200 miles and over 175	2 00
50 miles and over 40	1 00	225 miles and over 200	2 25
60 miles and over 50	1 05	250 miles and over 225	2 50
70 miles and over 60	1 10	300 miles and over 250	2 75
80 miles and over 70	1 15	350 miles and over 300	3 00
90 miles and over 80	1 20	400 miles and over 350	3 50
100 miles and over 90	1 25	Over 400 miles	4 00

52

Rates in cents per ton on coal and coke.

5 miles and under	$ 45	160 miles and over 150	$1 80
10 miles and over 5	50	200 miles and over 160	1 90
15 miles and over 10	55	210 miles and over 200	2 00
20 miles and over 15	60	220 miles and over 210	2 10
25 miles and over 20	65	230 miles and over 220	2 20
30 miles and over 25	70	240 miles and over 230	2 30
35 miles and over 30	75	250 miles and over 240	2 40
40 miles and over 35	80	260 miles and over 250	2 50
45 miles and over 40	85	270 miles and over 260	2 60
50 miles and over 45	90	280 miles and over 270	2 70
60 miles and over 50	95	290 miles and over 280	2 80
70 miles and over 60	1 00	300 miles and over 290	2 90
80 miles and over 70	1 05	310 miles and over 300	3 00
90 miles and over 80	1 10	320 miles and over 310	3 10
100 miles and over 90	1 15	330 miles and over 320	3 20
110 miles and over 100	1 20	340 miles and over 330	3 30
120 miles and over 110	1 25	350 miles and over 340	3 40
130 miles and over 120	1 30	360 miles and over 350	3 50
140 miles and over 130	1 35	370 miles and over 360	3 60
150 miles and over 140	1 40	380 miles and over 370	3 70
160 miles and over 150	1 45	390 miles and over 380	3 80
170 miles and over 160	1 60	400 miles and over 390	3 90
180 miles and over 170	1 70	All over 400 miles	4 00

At all points where railways intersect or meet at the same town or city from which freight shall be carried to the same points of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points, without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 5, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 16th day of September, 1891.

J. J. ARTHUR, *Secretary.*

That said Commodity Tariff No. 5, if enforced, will cause a loss or decrease in the revenue of the Gulf Company, per annum, as follows:

On Wood, $3,141.97, or 16.4 per cent.
On Coal, $..... .....or.....per cent., increase $40.71—0.07 per cent.
On Coke, $.....or.....per cent.

That the loss which would be caused by Commodity Tariffs No. 4 and 5 was arrived at in the same manner as the loss under Tariffs 1, 2 and 3.

53 Similar detailed statements under said Commodity Tariffs No. 4 and 5, verified as correct by the affidavit of the Auditor of the Gulf Company, are filed herewith, marked respectively "Exhibits C and D."

XV. That on or about the .....day of September, 1891, your orator's general freight agent received through the United States mail a document hereinafter called Commodity Tariff No. 6, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, Sept. 21, 1891.

Due and legal notice as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas, to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 6, hereby cancel and abolish all existing rates on cotton, and do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of cotton from and to points within said State on and after the 12th day of October, 1891, together with the regulations thereto herein prescribed and remain in force and effect until canceled by the Commission.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

Commodity Tariff No. 6.

Issued by the Railroad Commission of Texas and applying on cotton in bales, compressed and uncompressed, actual weight, in any quantity, between all stations in Texas, and canceling all existing rates on cotton.

Effective October 12, 1891.

Rates in Cents per 100 Pounds

Distances.	Cotton in Bales Compressed.	Distances.	Cotton in Bales Compressed.
10 miles and under	10	130 miles and over 125	34
15 miles and over 10	10¼	135 miles and over 130	35
20 miles and over 15	10½	140 miles and over 135	36
25 miles and over 20	10¾	145 miles and over 140	37
30 miles and over 25	11	150 miles and over 145	38
35 miles and over 30	11½	155 miles and over 150	39
40 miles and over 35	12	160 miles and over 155	40
45 miles and over 40	14	165 miles and over 160	41
50 miles and over 45	16	170 miles and over 165	42
55 miles and over 50	18	175 miles and over 170	43
60 miles and over 55	20	180 miles and over 175	44
65 miles and over 60	21	185 miles and over 180	45
70 miles and over 65	22	190 miles and over 185	46
75 miles and over 70	23	195 miles and over 190	47
80 miles and over 75	24	200 miles and over 195	48
85 miles and over 80	25	225 miles and over 200	49
90 miles and over 85	26	250 miles and over 225	50
95 miles and over 90	27	300 miles and over 250	51
100 miles and over 95	28	350 miles and over 300	52
105 miles and over 100	29	400 miles and over 350	53
110 miles and over 105	30	450 miles and over 400	54
115 miles and over 110	31	500 miles and over 450	55
120 miles and over 115	32	Over 500 miles	55
125 miles and over 120	33		

1. Fractions of less than 100 pounds must be charged for at the rate per pound fixed for 100 pounds.

2. No additional charge allowed where cotton passes over more than one road.

3. When, by agreement between a railroad company and a shipper, uncompressed cotton shall be stopped in transit and compressed 10 cents per 100 shall be added to the rate herein prescribed for compressed cotton to pay compress and all other charges incident thereto, and cotton so stopped and compressed shall take the rate prescribed for compressed cotton from original point of shipment to point of destination.

4. When shippers tender uncompressed cotton for shipment in that condition to its final destination, 10 cents per 100 pounds shall be added to the rate herein prescribed on compressed cotton for carrying such cotton all distances over thirty miles.

5. For transporting cotton all distances under thirty miles the rate on uncompressed cotton shall be the same as herein prescribed for compressed cotton.

6. The rate on cotton from all stations in Texas to Houston shall be the rate from said stations to Galveston, less 7 cents per 100 pounds.

7. The local rate on cotton from Houston to Galveston shall be 7 cents per 100 pounds.

8. At all points where railroads intersect or meet at the same

town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge
55 rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

9. For the purpose of compressing, cotton may be concentrated at any compress in the direction in which it is to be shipped; but where it is shipped back out of the direction of its destination for the purpose of being compressed, it must be compressed at the nearest compress provided that it shall not be located away from any compress station where it is marketed to a compress at another station for compressing. In all cases cotton so concentrated at a compress for the purpose of compressing must pay the local rate from the point of shipment to the compress. When such cotton is compressed and reshipped, the rate from the point from which it was originally shipped through to the point of destination shall be paid thereon and the local rate from such original point to the compress refunded to the shipper, provided that when cotton is concentrated in an opposite direction from its final destination only so much of the local charge shall be refunded as is necessary to make the rate from the point of concentration apply.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 6, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 21st day of September, 1891.

J. J. ARTHUR, *Secretary.*

That said commodity tariff No. 6 if enforced will result in a decrease in revenue, and hence loss to the Gulf Company of $108,334.37 per annum, regardless of the question of compressing, which loss is shown in detail in Exhibit B, No. 2.

That on or about the 19th day of October, 1891, the said general freight agent received through the United States mail a document hereinafter called circular No. 25, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN TEXAS, October 17, 1891.

Circular No. 25.

Amending Commodity Tariff No. 6.

It is ordered by the Railroad Commission of Texas that the following amendment is hereby made to Commodity Tariff No. 6, viz:

1. In order to equalize the rates on shipments of cotton made from points where there are no compresses with those on shipments from points at which there are compresses, it is ordered that in all cases where cotton shall be received by the railroads uncompressed at points having no compresses, such railroads may have such cotton compressed before it arrives at the point of destination in Texas, and in case such cotton is compressed before reaching such destination and the expense of compressing shall be paid by the

railroad carrying such cotton, the rate shall be 10 cents per
56 100 pounds more than the rate prescribed for compressed cotton in Commodity Tariff No. 6, to defray the expense of compressing.

2. If uncompressed cotton shall be shipped from points having no compresses to points in Texas, and the railroad or railroads carrying the same shall refuse to have it compressed, as provided in first section of this order, before reaching its destination in Texas, the rate on such shipments shall be the same as is prescribed in said tariff No. 6 on compressed cotton.

3. If any shipper of uncompressed cotton shall prefer to have the same carried to its destination without being compressed, he may so direct its shipment, and in such case the rate on the same shall be 10 cents per hundred pounds more than the rate prescribed by said tariff No. 6 on compressed cotton.

4. On all shipments of uncompressed cotton received by railroads, if such railroads intend to avail themselves of the provisions of the first section of this circular, the bills of lading shall in every instance specify that such cotton is to be compressed in transit and expenses of compressing to be paid by the carrier. And if from any cause such cotton shall not be compressed, any excess in the freight charges over the rate on compressed cotton as provided in said tariff No. 6 shall be an overcharge, and if collected shall be refunded.

5. It is not intended that the provisions of this circular shall affect Commodity Tariff No. 6 in respect to the concentration of cotton at compress points, nor any other of the provisions of said tariff not in conflict herewith.

6. This order shall take effect and be in force on and after October 21, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
E. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 25, amending Commodity Tariff No. 6, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 17th day of October, 1891.

J. J. ARTHUR, *Secretary.*

That said Circular No. 25, together with Commodity Tariff No. 6, if enforced, will cause a reduction in the revenue of your orator per annum on cotton of $56,000, or 2.8 per cent, making a total annual reduction on cotton of $164,334.37, or 32.54 per cent, all of which is shown in detail and fully explained in said Exhibit B, Nos. 1 and 2.

XVI. That on or about the 12th day of October, 1891, said general freight agent received through the United States mail a document hereinafter called Commodity Tariff No. 8, a true copy of which is as follows:

57 OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *October 10, 1891.*

Due and legal notice as provided by the act of the Twenty-second

Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation on all freight and property of every kind to be transported over railroads from point to point in said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and the said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 8, do fix and establish the rates herein set forth and the regulations in relation thereto, which said rates and regulations shall go into effect on all railroads in the State of Texas on shipments of freight therein named from and to points within said State on and after the 30th day of October, 1891, with the exceptions herein specified, and remain in force and effect until canceled by said commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Commodity Tariff No. 8.

Issued by the Railroad Commission of Texas, to apply on the commodities named below when shipped in quantities less than car loads, as follows:

Grain Rates.—On wheat, corn, rye, barley, oats, bran, malt, millfeed and millstuff, in barrels, boxes or sacks, and on hay in bales.

Flour Rates.—On flour, corn meal, oat meal, hominy and grits, in barrels, boxes or sacks.

Salt Rates.—On salt packed in barrels or sacks.

Effective October 30, 1891.

Commodity Tariff No. 7, adopted September 29, 1891, by the Railroad Commission of Texas and effective October 21, 1891, will be hereby canceled.

Rates in cents per one hundred pounds.

Distances.		Grain, Salt.	Flour.
5 miles and under		10	10
10 miles and over	5 miles	11	11
15 miles and over	10 miles	12	12
20 miles and over	15 miles	12½	13
25 miles and over	20 miles	13	14
30 miles and over	25 miles	13½	14½
35 miles and over	30 miles	14	15
40 miles and over	35 miles	14½	15½
45 miles and over	40 miles	15	16

Rates in cents per one hundred pounds—Continued.

Distances.	Grain. Salt	Flour.
50 miles and over 45 miles	15½	16½
55 miles and over 50 miles	16	17
58		
60 miles and over 55 miles	16½	17½
65 miles and over 60 miles	17	18
70 miles and over 65 miles	17½	18½
75 miles and over 70 miles	18	19
80 miles and over 75 miles	18½	19½
85 miles and over 80 miles	19	20
90 miles and over 85 miles	19½	20½
95 miles and over 90 miles	20	21
100 miles and over 95 miles	20½	21½
105 miles and over 100 miles	20½	22
110 miles and over 105 miles	21	22½
115 miles and over 110 miles	21	22½
120 miles and over 115 miles	21½	23
125 miles and over 120 miles	21½	23
130 miles and over 125 miles	22	23½
135 miles and over 130 miles	22½	24
140 miles and over 135 miles	22½	24
145 miles and over 140 miles	23	24½
150 miles and over 145 miles	23	24½
155 miles and over 150 miles	23½	25
160 miles and over 155 miles	24	25½
165 miles and over 160 miles	24	25½
170 miles and over 165 miles	24½	26
175 miles and over 170 miles	24½	26
180 miles and over 175 miles	25	26½
185 miles and over 180 miles	25	26½
190 miles and over 185 miles	25	26½
195 miles and over 190 miles	25½	27
200 miles and over 195 miles	25½	27
210 miles and over 200 miles	26	27½
220 miles and over 210 miles	26	27½
230 miles and over 220 miles	26	27½
240 miles and over 230 miles	26½	28½
250 miles and over 240 miles	26½	28½
260 miles and over 250 miles	26½	28½
270 miles and over 260 miles	26½	28½
280 miles and over 270 miles	27	29
290 miles and over 280 miles	27	29
300 miles and over 290 miles	27	29
310 miles and over 300 miles	27	29
320 miles and over 310 miles	27½	29½
330 miles and over 320 miles	27½	29½
340 miles and over 330 miles	27½	29½
350 miles and over 340 miles	27½	29½
360 miles and over 350 miles	28	30
370 miles and over 360 miles	28	30
380 miles and over 370 miles	28	30
390 miles and over 380 miles	28	30
400 miles and over 390 miles	28½	30½
420 miles and over 400 miles	29	31
440 miles and over 420 miles	30	32
460 miles and over 440 miles	31	33
480 miles and over 460 miles	32½	35
Over 480 miles	35	37

59 *Conditions.*

First—When any freight included in this tariff shall be carried over two or more railroads, or parts of railroads, not under the same control, the rate shall be determined by adding together the charges on the several railroads or parts of railroads as prescribed in this tariff for the respective distances such freight is carried over each and deducting from the sum 20 per cent. The joint rate thus ascertained may be divided between roads over which the freight is transported in such proportion as may be agreed upon between such roads.

Second—All connecting roads which are under the management, and controlled by lease, ownership or otherwise of one and the same company, shall, for the purpose of transportation in applying this tariff, be considered as constituting but one and the same road, and the rate shall be computed as upon parts of one and the same road.

Third—When two or more routes of railroad extend from points of origin to destination, the lowest rate applicable under the specifications of this tariff by any one of such routes may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

Fourth—The minimum charge on any single shipment of the commodities subject to this tariff shall be 25 cents.

Exceptions.

First—The following named lines of railroad will be exempt from the operations of this tariff: Brownsville & Gulf Railroad; Galveston & Western Railroad; Lake Creek Railroad; Rio Grande Railroad; Rio Grande & Eagle Pass Railroad; Rio Grande & El Paso Railroad.

Second—The existing rate of seven and a half cents per hundred pounds on flour, meal, hominy, grits and bran in lots of ten barrels or more, on all shipments between Galveston and Houston, shall remain in force, provided that the charge for less than ten barrels shall in no case exceed the charge for ten barrels.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 8 with the exceptions thereto and the rules governing the same, adopted by the Railroad Commission.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 10th day of October, 1891.

J. J. ARTHUR, *Secretary.*

That said Commodity Tariff No. 8, if enforced, will cause a further material and serious reduction in the revenue of the Gulf Company, not included in the foregoing allegations, the exact amount of which can not now be stated.

That on or about the 17th day of October, 1891, the said general freight agent received through the United States mail a document hereinafter called "Commodity Tariff No. 9," which is as follows:

60 OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 16, 1891.

Due and legal notice, as provided by the act of the Twenty-second

Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given to each railroad company in said State that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 9, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *Wood, Coal and Coke* from and to points within said State on and after the 5th day of November, 1891, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
W. P. FOSTER, *Commissioners.*

Commodity Tariff **No. 9.**

Issued by Railroad Commission of Texas. To apply by continuous mileage between points in Texas, subject to conditions contained in Circular No. 20, adopted by the Railroad Commission of Texas October 7, 1891, and effective October 19, 1891, on shipments of *Wood, Coal* and *Coke in car loads.*

Effective November 5, 1891.

Rates on Wood in Dollars and Cents per Cord. Minimum, Eight (8) Cords per Car.

Distances.	Rates.	Distances.	Rates.
10 miles and under	$ 80	125 miles and over 100	$1 50
20 miles and over 10	85	150 miles and over 125	1 70
30 miles and over 20	90	175 miles and over 150	1 85
40 miles and over 30	95	200 miles and over 175	2 00
50 miles and over 40	1 00	225 miles and over 200	2 25
60 miles and over 50	1 05	250 miles and over 235	2 50
70 miles and over 60	1 10	300 miles and over 250	2 75
80 miles and over 70	1 15	350 miles and over 300	3 00
90 miles and over 80	1 20	400 miles and over 350	3 50
100 miles and over 90	1 25	Over 400 miles	4 00

61 Rates on *Hard Coal*, applying on *Hard Coal* and *Blacksmiths' Coal*.
Rates on *Soft Coal*, applying on *Soft Coal* and *Coke*.

In Dollars and Cents per ton of 2000 pounds. Minimum, 20,000 pounds per car.

Distances.	Rates.		Distances.	Rates	
	Hard Coal.	Soft Coal.		Hard Coal.	Soft Coal.
5 miles and under.....	$0 60	$0 45	190 miles and over 180.....	$2 15	$1 80
10 miles and over 5.....	60	50	200 miles and over 190.....	2 20	1 90
15 miles and over 10.....	70	55	210 miles and over 200.....	2 25	2 00
20 miles and over 15.....	70	60	220 miles and over 210.....	2 30	2 10
25 miles and over 20.....	80	65	230 miles and over 220.....	2 35	2 20
30 miles and over 25.....	80	70	240 miles and over 230.....	2 40	2 30
35 miles and over 30.....	90	75	250 miles and over 240.....	2 45	2 40
40 miles and over 35.....	90	80	260 miles and over 250.....	2 50	2 50
45 miles and over 40.....	1 00	85	270 miles and over 260.....	2 55	2 55
50 miles and over 45.....	1 00	90	280 miles and over 270.....	2 60	2 60
60 miles and over 50.....	1 10	95	290 miles and over 280.....	2 65	2 65
70 miles and over 60.....	1 20	1 00	300 miles and over 290.....	2 70	2 70
80 miles and over 70.....	1 30	1 05	320 miles and over 300.....	2 75	2 75
90 miles and over 80.....	1 40	1 10	340 miles and over 320.....	2 80	2 80
100 miles and over 90.....	1 50	1 15	360 miles and over 340.....	2 85	2 85
110 miles and over 100.....	1 60	1 20	380 miles and over 360.....	2 90	2 90
120 miles and over 110.....	1 70	1 25	400 miles and over 380.....	2 95	2 95
130 miles and over 120.....	1 80	1 30	450 miles and over 400.....	3 00	3 00
140 miles and over 130.....	1 90	1 35	500 miles and over 450.....	3 00	3 00
150 miles and over 140.....	1 95	1 40	550 miles and over 500.....	3 25	3 25
160 miles and over 150.....	2 00	1 45	600 miles and over 550.....	3 50	3 50
170 miles and over 160.....	2 05	1 60	650 miles and over 600.....	3 75	3 75
180 miles and over 170.....	2 10	1 70	Over 650 miles.....	4 00	4 00

When two or more routes of railroad extend from point of origin to destination, the lowest rates applicable, under the specifications of this tariff, by any one of such routes, may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

EXCEPTIONS.

First.—The existing rate of $1.00 per ton of 2240 pounds on coal and coke between Galveston and Houston shall remain in force.

Second.—The rates on coal, authorized for application between points on the Rio Grande & Eagle Pass R'y by Circular No. 18, issued by the Railroad Commission of Texas October 6, 1891, and effective October 15, 1891, shall remain in force.

Commodity Tariff No. 5, adopted by the Railroad Commission of Texas, September 16, 1891, and effective October 8, 1891, will be hereby *canceled*.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 16th day of October, 1891.

J. J. ARTHUR, *Secretary.*

62 That said Commodity Tariff, if enforced, will cause a loss or decrease in the revenue of the Gulf Company per annum as follows:

On wood, $3,141.96, or 16.4 per cent.
On coal, $432.32, or 8.5 per cent.
On coke, $....., or.....per cent.

That on or about the 16th day of October, 1891, the said general freight agent received through the United States mail a document hereinafter called Circular No. 23, which is as follows:

OFFICE RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 15, 1891.

Circular No. 23.

Amending commodity tariff No. 6.

It is hereby ordered that Commodity Tariff No. 6, adopted September 21, and effective October 12, 1891, be amended as follows:

Rates on cotton in bales from points named below to Houston and Galveston, effective October 21, 1891, in cents per 100 pounds:

63

From—	To— Houston.	Galveston.
H. E. W. & T.		
Kleberg	10	17
Porter	12	19
Presswood	13	20
Cleveland	15	22
Keno	20	27
Napier	30	37
Shepherd	30	37
Goodrich	30	37
I. & G. N.—		
Arcola	10	10
Elm Grove	15	25
Sandy Point	20	25
Chenango	23	30
East Columbia	25	30
Dodge	35	42
Huntsville	35	42
Phelps	33	40
Waverly	30	37
Willis	30	37
Harrisburg	7	7
Dumont	7	7
Genoa	7	7
Websterville	7	7
Clear Creek	7	7
Shell Siding	7	7
Dickinson	7	7

From—	To— Houston.	Galveston.
H. & T. C.—Con.		
Courtney	31	37
Chappel Hill	31	37
T. & N. O.—		
Sheldon	10	17
Crosby	10	17
Dayton	15	22
Liberty	20	27
Devers	20	27
Sour Lake	20	27
Beaumont	20	27
Orange	20	27
S. A. & A. P.—		
Weiss	30	37
Kountze	40	47
Village	40	47
Woodville	40	47
Colmesneil	40	47
Summit	40	47
Rockland	45	52
G. H. & S. A.—		
Staffords	10	15
Walker	10	15
Richmond	10	16
Rosenberg	12	19
East Bernard	20	27
New Philadelphia	23	30

From—	To— Houston.	Galveston.
I. & G. N.—Con.		
Highland	7	7
Virginia Point	7	7
Eagle Grove	7	7
Galveston	7	.....
T. W.—		
Westheimer	10	17
Piney Point	10	17
Beeler	10	17
Zimbi	10	17
Wimberley	10	17
Leslie	10	17
Pattison	20	27
Clemons	22	29
San Felipe	25	32
Sealy	25	30
S. A. & A. P.—		
Jeanetta	10	17
Clodine	10	17
Whites	10	17
Fulshear	10	17
Harris	10	17
Simonton	15	22
Carlton	20	25
Wallis	20	25
Ficklin	24	31
Eagle Lake	27	32
Altair	30	37
H. & T. C.—		
Cypress	20	27
Hockley	25	32
Hempstead	30	37

From—	To— Houston.	Galveston.
G. H. & S. A.—Con.		
Eagle Lake	25	32
Alleyton	33	40
G. C. & S. F.—		
Galveston	7	.....
Eagle Grove	7	7
Virginia Point	7	7
Hitchcock	7	7
Arcadia	7	7
Alvin	7	7
Mustang	10	10
Arcola	10	10
Dukes	10	10
House	10	10
Thompson	10	10
Crabb	10	10
Richmond	10	15
Rosenberg	12	19
Dyer	20	20
Wallis	20	25
Sealy	25	30
Millheim	32	34
Bellville	33	36
Kenney	35	40
Phillips	36	41
Gay Hill	39	45
Quarry	39	45
Somerville	40	45
Clay	39	46
Allenfarm	38	45
Lyons	40	45

64 All stations on Trinity & Sabine Railway, except Trinity, 40 to Houston and 47 to Galveston.

Circular No. 19, adopted by the Railroad Commission of Texas October 6, 1891, and effective October 12, 1891, will be hereby canceled.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 23, amending commodity tariff No. 6, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 15th day of October, 1891.

J. J. ARTHUR, *Secretary.*

That said circular, if enforced, will cause a reduction in the revenue of the Gulf Company of $1,347.72 per annum, or 5.2 per cent., as shown by Exhibit "E" filed herewith.

XVII. That on or about the 20th day of September, 1891, said Gulf Company's general freight agent received through the United States mail a document hereinafter called Circular No. 10, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *September 10, 1891.*

Circular No. 10.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 3, adopted September 1, 1891, be modified and amended (as provided in section 8 of the commission law), to take effect September 23, 1891, as follows:

Exception No. 2 is changed to read as follows:

Exception No. 2—Points on the Houston East and West Texas Railway north of Valda to the Sabine river shall take the rate fixed from Valda by the mileage rate to all points in the State west of Houston.

Exception No. 4 is changed to read as follows:

Exception No 4.—The rates now in force from points on the Texas & New Orleans Railroad, and Sabine & East Texas, east of Houston to Houston and Galveston and all intermediate stations, shall remain in force.

Exception No. 5 is amended to read as follows:

Exception No. 5.—The rates now in force from points on the Houston East & West Texas Railroad north of Houston to Houston and Galveston and all intermediate points, shall remain in force.

The following exceptions are added:

Exception No. 6.—The rates now in force from points on the Trinity & Sabine Branch of the Missouri, Kansas & Texas Rail-
65 road and the International & Great Northern Railroad from Trinity to Houston and Galveston and all intermediate stations, shall remain in force.

Exception No. 7.—The rates now in force from milling stations on the Trinity & Sabine Branch of the Missouri, Kansas & Texas *Texas* Railroad, the International & Great Northern Railroad, Houston East & West Texas Railroad, Texas & New Orleans and Sabine & East Texas Railroads, to Corpus Christi, Rockport and Portland, shall remain in force.

The minimum weight per car of lumber, laths and shingles on the narrow gauge part of the East Line & Red River Railroad shall be 16,000 pounds.

Fencing manufactured of wire and lumber shall take the lumber rate. The minimum weight per car on shipments originating on the Houston East & West Texas Railroad shall be 20,000 pounds.

The regulation prescribing a charge of $5.00 per car for stopping lumber in transit for planing is abolished, and the railroads and shippers can adjust this charge to suit themselves.

In all cases where existing rates are continued in force, railroads must file with the Commissioner a copy of their tariffs, showing rates from Mills to all points within the excepted territory.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true copy of the amendments and modifications to Commodity Tariff No. 3, adopted by the Railroad Commission of Texas this the 19th day of September, 1891.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin this the 19th day of September, 1891.

J. J. ARTHUR, *Secretary.*

That on or about the 22d day of September, 1891, said Gulf Company's general freight agent received through the United States mail a document, hereinafter called Circular No. 11, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 21, 1891.

Circular No. 11.

Amending Commodity Tariff No. 1.

Owing to the conflicting practices among railroads in applying the rates and regulations prescribed in Commodity Tariff No. 1, and the fact that the ruling of the Commission of August 28, 1891, in regard to the application of the per cent allowed certain roads and parts of roads, in its practical results, gives them 20 per cent on their locals, instead of 10 per cent as intended, we find it necessary to change the ruling above mentioned and make the following regulations in regard to applying the 10 per cent addition under Commodity Tariff No. 1.

First—To make a rate on a road not taking 10 per cent increase to a point on a road taking 10 per cent increase, first obtain the local of each road (the local of the road authorized to add 10
66 per cent to the tariff is the rate for the mileage freight is carried over the road, plus 10 per cent), deduct 20 per cent of the sum of the two locals, and this will give the rate to be applied.

Example: Take two roads, one of which is entitled to add 10 per cent, with a haul of fifty miles each; the local of the 10 per cent road is 8 cents, plus 10 per cent, equals 8.8 cents. The local of the other road is 8 cents, the sum of the two locals is 16.8 cents; deduct 20 per cent and the result shows the correct through rate, which is 13.5 cents.

Drop all fractions less than 1.10 in computing rates under Commodity Tariff No. 1.

The amendment to Commodity Tariff No. 1, adopted August 27, 1891, in Circular No. 5, authorizing bran to be mixed with flour, in car loads, was not intended to change the rate on bran, which still takes the grain rate.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 11, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 20th day of September, 1891.

That on or about the 7th day of October, 1891, said general freight agent received through the United States mail a document hereinafter called Circular No. 19, a true copy of which is as follows:

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 6, 1891.

Circular No. 19.

Amending Commodity Tariff No. 6.

It is hereby ordered that Commodity Tariff No. 6, adopted September 21, 1891, and effective October 12, 1891, be amended as follows:

Rates on cotton in bales from points named below to Houston and Galveston. Effective October 12, 1891.

67 *In Cents Per One Hundred Pounds.*

From—	To— Houston.	Galveston.	From—	To— Houston.	Galveston.
Alvin	7	7	Kleiber	10	17
Arcadia	7	7	Leslie	10	17
Arcola	10	10	Mustang	10	10
Beaumont	20	27	New Philadelphia	23	30
Beeler	10	17	Orange	20	27
Clear Creek	7	7	Philips (H. E. & W. T.)	12	19
Cleveland	15	22	Piney Point	10	17
Crabb	10	10	Presswood	13	20
Crosby	10	17	Rosenberg	12	19
Dayton	15	22	Richmond	10	15
Devers	20	27	Sheldon	10	17
Dickinson	7	7	Shell Siding (I. & G. N.)	7	7
Dukes	10	10	Simonton	15	22
Dumont	7	7	Sour Lake	20	27
Eagle Grove	7	7	Stafford	10	15
East Bernard	20	27	Thompson	10	10
Fulshear	10	17	Virginia Point	7	7
Galveston	7	...	Walker	10	15
Genoa	7	7	Webberville	7	7
Harris	10	17	Weiss	30	37
Harrisburg	7	7	Westheimer	10	17
Highland	7	7	Whites	10	17
Hitchcock	7	7	Wimberly	10	17
House	10	10	Zumbi	10	17
Jeanetta	10	17			
Keno	20	27			

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 19, amending Commodity Tariff No. 6, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 6th day of October, 1891.

J. J. ARTHUR, *Secretary.*

That on or about the 25th day of September, 1891, said General Freight Agent received, through the United States mail, a document hereinafter called Circular No. 12, a true copy of which is as follows:

68 OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *September 24, 1891.*

Circular No. 12.

Amending Commodity Tariff No. 4.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 4, adopted September 12 and effective October 5, be amended as follows, to take effect October 5, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Change the last line on page two (2) in the mileage column to read "over 500 miles."

Amend the rate on cotton seed as follows:

In Cents, Per One Hundred Pounds.

5 miles and under	4	50 miles and over 40	8
10 miles and over 5	5	60 miles and over 50	8½
15 miles and over 10	5½	80 miles and over 60	9
20 miles and over 15	6	100 miles and over 80	10
30 miles and over 20	7	120 miles and over 100	11
40 miles and over 30	7½		

I hereby certify that the above is a true and correct copy of Circular No. 12, amending Commodity Tariff No. 4, this day adopted by the Railroad Commission of Texas. Given under my hand and seal of Railroad Commission of Texas, at the city of Austin, this the 24th day of September, 1891.

J. J. ARTHUR, *Secretary.*

That each and all of said circulars, except No. 10, if enforced, will make a further material and serious reduction in the revenue of the Gulf Company, not included in the foregoing allegations, except as herein otherwise indicated, the exact amount of which your orator is not now able to state.

XVIII. That on or about the 7th day of November, 1891, the General Freight Agent of the Gulf Company received, through the United States mail, a document hereinafter called Circular No. 34, a copy of which is as follows:

Circular No. 34.

OFFICE OF RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, *November 6, 1891.*

The following rules and rates are hereby established to govern the reception, delivery and transportation of loaded cars from point to point on all railroads within this State, and shall become effective November 27, 1891:

69 First. When any railroad may wish to have a loaded car or cars hauled to any point on a connecting line or over a connecting line or lines to some point on any such connecting lines; or when any other party may wish to have a loaded car or cars hauled over any railroad to a point on its lines or to a point on any connecting line or lines, such loaded cars shall be tendered to the road which it may be desired by such a railroad or other party to receive such loaded cars at a station on its line, and on its track if such receiving road shall so desire and demand.

Second—When such loaded car shall be so tendered, it shall be received and transported to its destination by the road to which tendered, if destined to a point on its line, and if destined to a point on some connecting line or lines, then it shall be transported to the next connecting line in the route over which shipped, and delivered to such connecting road to be transported to the point of destination.

Third—The rate of transportation on loaded cars so tendered shall be upon the commodity of property with which they are loaded without regard to the fact as to what road said cars belong; and the rates shall be the same as are established or in use for like commodities when hauled in the cars belonging to the roads over which the same are hauled.

Fourth—The provisions of this circular shall apply only to loaded cars which have arrived at the point of original destination and which it may become necessary or desirable to reship to another destination within this State without unloading, and to such as may be loaded at the point when tendered for shipment.

Fifth—Every railroad company hauling loaded cars destined to be carried to a point on a connecting line or to be carried over a connecting line or lines, and upon which through bills of lading to the points of destination have not been given by the road upon which the same originated, shall deliver said loaded cars at the designated point of junction with the connecting line to the road over which said loaded cars are to be carried without unloading the same if so requested, and the road or roads on or over which such loaded cars may be carried shall pay to the road owning the cars the established rate for the use of such cars; and when there is no established rate they shall pay the usual rate for the use of such cars, and when such cars shall have been unloaded, the same shall be returned to the road to which they belong by the road or roads so using them, free of charge to the owner.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Your orator further avers, that by said Circular No. 34, said Commission requires and commands, and unless restrained by this court will compel the defendant railway company upon the demands of the owner of any freight or property contained in any car owned by said railway company or in its possession, to surrender and deliver its said car containing said freight or property to any railway company designated by said owner with which the railway of defendant

company connects, to be used by such other railway company
70 upon its own lines and its connections, in the transportation of said property to any place off the line of Gulf Company's railway designated by the owner of said freight. That under the terms of said Circular, the cars of the Gulf Company may be taken from its possession and used as above stated without the consent of the Gulf Company, and without adequate compensation, and without other compensation for the use thereof by such shipper or other railway company while off said Gulf Company's line and out of its possession than a rental fixed by the said Commission during the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

That by said Circular said Commission also requires and commands and unless restrained by this court will compel the Gulf Company under pain of the penalties by said act prescribed upon the tender of any car containing freight or property for transportation and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may, under the directions of the owner of the freight therein, or of the said railway company tendering said car, be hauled over the Gulf Company's Railway as aforesaid, although the Gulf Company owns and possesses a large number of cars for transportation of property received by it as a common carrier, and has during at least six months of every year and for some varieties of freight during the entire year, a sufficient number of idle cars available for such use. After such car has been transported to the point designated by the owner of the freight contained therein, the Gulf Company is by said Circular required to again haul said car over its railway and redeliver it to the company from which it was received without any compensation whatever for such carriage and service.

That said Circular also requires the Gulf Company to perform any necessary switching service in receiving from or delivering to any connecting railway line any such car, without compensation or reward.

71 That in the respect above recited, the defendant railway company is and would be by said Circular, deprived of its property without due process of law, and not in due course of law, contrary to Section 1 of Article 14 of the Amendments of the Constitution of the United States, and of Sections 17 and 19 of Article 1 of the Constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said Circular No. 34 is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points

within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to its actual and final destination; the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said Commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect your orator shows that said Circular No. 34, and said act of the Legislature of the State of Texas purporting to confer upon said Railroad Commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void because in conflict with and in violation of Section 8 of Article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An Act to regulate commerce," approved February 4, 1887, and the amendments thereto.

XIX. That at said purported hearings before the said commission only the commodities referred to in Commodity Tariffs Nos. 1, 2 and 3 were referred to and discussed, and there was no reference to or discussion of the rates now existing or which should be made on articles mentioned in Commodity Tariffs Nos. 4, 5, 6, 8 and 9.

72 Before the issuance of said Commodity Tariffs Nos. 4, 5, 6, 8 and 9, the Gulf Company was given no notice that the rates and matters therein referred to were under consideration, or would be considered, by the said Commission and was given no opportunity to be heard thereon or in respect thereto.

That said circulars were issued by the said Commission without giving the Gulf Company any previous notice thereof, or any opportunity to be heard in respect to the matters referred to in said circulars, or any or either of them, before action thereon by the Commission.

That it is evident from the action of said Commission as hereinbefore recited, that Section 4 of the Commission law is construed by the Commission to merely require the Commission to give an omnibus notice to the Gulf Company and all others to the effect that on the 6th day of July, 1891, they would commence classification and making of rates, and that after the giving of said omnibus notice they have been, are and will be authorized under the Commission law to issue tariffs from time to time without notice, or hearing of the parties who will be effected thereby, and that after such tariff or tariffs are issued, such Commissioners are and will be authorized to change them at will from time to time without notice whatever or opportunity of a hearing to the Gulf Company or others who will be effected thereby.

Your orator avers that the rates attempted to be fixed by the said Commission in the aforesaid tariffs and circulars, including the said Commodity Tariffs No. 1, 2 and 3, were not fixed or established at any time or place where the Gulf Company had notice thereof or opportunity to be present and heard, and to the contrary your orator avers that at such sessions before the said Commission

on or about July 15, 1891, and again on or about August 7, 1891, the said Commission dismissed the representatives of the Gulf Company, stating that their presence was no longer needed or desired, and the purported rates or tariffs were thereafter attempted to be fixed or established without notice or opportunity for the Gulf Company to be heard at the time and place when and where they were fixed or established.

That at the various sessions and hearings of said Commission, as hereinbefore recited, no evidence was introduced showing, or tending to show, that the rates of the Gulf Company now or heretofore existing were unreasonable or unjust, or that it was earning more revenue than it was justly entitled to earn, and no evidence was introduced tending to show the correctness or justness of the proposed rates of the Commission, other than the statement of the chairman of the Commission that the cotton rates in Texas were higher than in other States, and there was no complaint made at any of said sessions that the Gulf Company's rates were too high, or produced for it more than it should receive.

73

The only complaint heard by the representatives of the Gulf Company being that some of its rates were too high relative to other rates, and in so far as its representative now remembers, such complaint was made only by those claiming a mileage tariff on lumber and as to the commodity of salt, it being alleged that the local rates of the Gulf Company in Texas on salt were such as to prevent the manufacturers in Texas from competing for the business with the State of Kansas and other States, and the representatives of the Texas salt interests asked for a common point rate of twenty cents per hundred, as against a common point rate from Kansas of thirty-five cents per hundred. That, however, the said Commission in making their purported salt tariff made a much greater reduction in rates than was asked for by the representatives of the Texas salt interests, and the effect of such reduction will be to practically prohibit the shipment of salt from Kansas to Texas, as to enable the Kansas salt producers to compete in the markets of Texas the railway route from Kansas to Texas, of which the Gulf Company's railroad is a part, will have to make such a low rate that ther will be no profit therein, and hereafter the Gulf Company will be deprived of a lucrative business which it has heretofore enjoyed in hauling Kansas salt, and thereby subjected to a loss in addition to that heretofore shown, and which said loss on such Kansas traffic can not now be accurately stated.

That if any evidence was ever introduced before said Commission, or any evidence ever obtained by them, which could or did induce or justify the Commission in attempting to reduce the Gulf Company's revenue, it and your orator have never been advised of the same, and are still in total ignorance of the same, and at said purported hearings bef ore said Commission no formal or written charges whatever were preferred or made against the Gulf Company, no witnesses were sworn and no evidence introduced, and the said sessions or meetings before the Commission were general in their character, every person present being allowed to take part therein.

74

That said Commission, although it was fully empowered by law to do so, and was requested by the Gulf Company so to do, failed and refused to appoint experts or to adopt any other means of investigating the financial status of or the revenue or resources of the Gulf Company or any other railway companies of the State, and failed, to make any effort whatever to inform themselves as to whether the conditions were such as to authorize them to make a reduction in the rates or in the revenues of the railroads in general, or of the Gulf Company in particular; that at the sessions of said Commission, at which the Gulf Company or any other railway companies, were represented, no evidence whatever was introduced tending to show that the present rates of the Gulf Company, or of any other railway companies were too high or were unjust or exorbitant, or yielded greater revenue than the Gulf Company or than such other railway companies were entitled to receive; that if any such evidence was ever had by said Commission, or any complaint made to said Commission, that the rates of the Gulf Company were unjust or exorbitant, the same was had, or the same was made, when the Gulf Company was not represented and had no opportunity to be present and to controvert the same, or to cross-examine the parties from whom the same was obtained or by whom the same was made.

That the said Commission have admitted that they intended to and have attempted to accomplish a reduction of fifteen per cent in the cotton rates of the Gulf Company, and hence a consequent reduction to that extent in its revenue. Said Commission have admitted that they never acquired or were possessed of sufficient data or information or knowledge of the facts to enable them to properly make a tariff which would give the proper revenue to the Gulf Company, but that they are experimenting in tariff making at the expense of the revenue of the said
74a Gulf Company. That the said tariffs and circulars of rates and charges were so promulgated by said Commission without any evidence whatever having been taken or adduced before it which showed or tended to show that said rates and charges were just, fair or reasonable, and the same were so issued notwithstanding that the uncontradicted showing made by representatives of the Gulf Company before said Commission tended to show and did show that such rates and charges would be unjust, unfair and unreasonable.

XX. That the tariffs of the Gulf Company prevailing on the 10th day of June, 1891, can not be changed by the Gulf Company without the consent of the said Commission, and the Gulf Company has applied to the said Commission to raise its rates on general merchandise, known as the classes, to such an extent as to offset the reductions in revenue which will be effected by the said purported Commission tariffs if enforced, and such request has not been granted by the said Commission. Your orator avers that the tariffs in effect on the 10th day of June, 1891, should be considered in connection with the tariffs of the Commission as herein set forth, and if as a whole they will not produce to the Gulf Company such revenue as it is entitled to receive, then the action of said Commission in attempting to reduce its revenue ought not to be sustained; and your orator avers that the same will fall short several hundred thousand dollars of producing such revenue.

That before any action was taken by said Commission the railway companies, including the Gulf Company, protested to said Commission that they ought not to fix tariffs on particular commodities which would involve a reduction of revenue, without at the same time increasing the rates on the classes or other commodities, and thereby equalize said reduction.

74b That even if increased tonnage can be expected, that the Gulf Company is entitled to carry the same under its present rates, or rates equivalent in producing revenue, until such time as it earns enough to pay operating expenses, interest on its bonds, some dividend on its stock, as well as the cost of such renewals, enlargements and repairs on its road, appurtenances and equipments as should be properly made out of the earnings of the property, for which last named purpose it requires from three to five hundred thousand dollars annually for the next five years; that there is no probability whatever that there will be such an increase in tonnage as even under the rates prevailing at the time said Commission tariffs were issued and on the 10th day of June, 1891, will enable the Gulf Company to pay operating expenses and interest on its bonds during the next two or more years.

XXI. That said Commission claim that in fixing their rates they took as a basis a comparison of the rates prevailing in Texas and other States, and between the rates prevailing in Texas and the rates prevailing on interstate shipments to and from Texas by the all-rail interstate lines. That Georgia was the only State whose tariffs were mentioned or referred to by the Commission at the various sessions aforesaid, and hence your orator believes and avers that it was the only State with whose rates, fixed by a Commission, the Texas Commission compared rates. Your orator alleges that the expense of the maintenance and operation of railroads in the State of Texas is from 25 to 40 per cent. higher and greater than in the State of Georgia, which fact the Gulf Company, on the hearings herein referred to, attempted to show the Commission, and which fact was not duly considered by the said Texas Commission in their comparisons, and that the difference in the cost of maintenance and operation, and other conditions considered, the Gulf Company's present rates are as low as those prevailing in the State of

75 Georgia, and hence the conditions existing in the State of Georgia furnished no excuse or justification for the attempt of the Texas Railroad Commission to reduce the rates and revenue of the Gulf Company.

That the interstate rates are made by the competition of the lines leading from St. Louis, New Orleans and other cities, which lines make such rates comparatively low in order to enable such cities to compete in the markets of Texas with the cities of Texas, and in order to enable such cities and lines to handle a portion of the exports of Texas. That such interstate lines can afford to make such low rates rather than not participate in the business, and they can afford to make any rate necessary to stay in the business, which will net them any amount whatever per car load over and above the actual cost and expense of handling the shipment and wear and

tear on the track; that particularly in commodities embraced in Commodity Tariffs Nos. 1, 2 and 4 such interstate lines are compelled to make low rates to New Orleans, St. Louis and other cities in order to secure any of the business, and they can afford to take such business at any rate that will even pay them 1 cent per car load net, rather than not secure any business at all. That the Gulf Company would willingly see such rates much higher than they are, but they are caused by competitive conditions over which the Gulf Company and the Texas Railroad Commission have no control.

That the interstate rates to a portion of the State of Texas are also caused and kept low by the water competition via the Atlantic and the Gulf of Mexico, and via the Mississippi and other rivers, while in most of the territory covered by the local rates in the State of Texas there is practically no water competition. Your orator avers that the comparison of the local rates in Texas with through rates or interstate rates, so made by such all-rail lines, or by water competition, is and was the most unfair and unjust basis of judging of the reasonableness of the Texas rates, especially as such all-rail lines are chiefly supported by the local traffic in the States of Missouri, Arkansas and other States where their local rates, conditions considered, are as high or higher than the local rates prevailing in Texas on and before the 10th day of June, 1891, while the Gulf Company is almost entirely dependent on the traffic of the State of Texas (with the exception of 100 miles in the Indian Territory for its support. If the Texas Commission desired to make a comparison as a basis for fixing rates, they should have compared the conditions (including cost of operation and maintenance) and local rates in Texas with the local rates in the above-named States and others, and not with the through rates referred to. That said through rates were made, as before stated, either by water competition or by all-rail competition of lines which are forced to make such rates in order to secure any of the business, and which enjoy for their support local rates in other States, conditions considered, as high or higher than the local rates prevailing in Texas.

76

XXII. Your orator alleges that the Gulf Company's rates prevailing on the tenth day of June, 1891, when the said Commission commenced operation, with a few trifling exceptions, were reasonable, just and fair, and that such rates are and were not prohibitive of the free movement of commerce, but that under such rates and higher rates prevailing in previous years, there has been a constant increase in production and commerce in all the country contributary to the Gulf Company's road. The reduction of the Gulf Company's rates will not in itself cause any increase in the production of or in consumption or movement of freight over its lines, but to the contrary, your orator alleges that there is already, under its present rates, an over production of the commodity of cotton, from which the Gulf Company derives by far the greater revenue than from any article of transportation. Your orator is informed and believes that the question of, in some way, checking the production of cotton is now being considered by the cotton producers of the State, or many of them, and on all the other commodities mentioned in the various tariffs aforesaid, the Gulf Company's rates are and

have been such as to allow the free movement and transportation of the same; that the articles mentioned in the aforesaid tariffs of said Commission, exclusive of the shipments not subject to commission rates, comprise about 23 per cent of the total freight tonnage of the Gulf Company, and there is derived therefrom 30 per cent of the freight earnings of the Gulf Company, 24.79 per cent of its total earnings, and your orator believes and therefore alleges that even if said Commission desired to do so, which is not admitted but denied, it would not be practicable for them to so raise the rates on the balance of the commerce
77 as to make up for the loss which would be caused by the enforcement of their tariffs on such articles. Your orator avers that as long as the Gulf Company is not charging more than the traffic will bear, or more than parties had to pay before the construction of the railroad of the Gulf Company, and as long as under the Gulf Company's rates there is a free movement of the articles affected thereby, and as long as the earnings of the Gulf Company from such rates are not sufficient to enable it to pay interest on its bonds, all of which your orator alleges to be true, its rates are not and can not be unreasonable or too high, and to force their reduction would be equivalent to giving the free use of a proportionate amount of the capital invested in the Gulf Company's railroad to its patrons or shippers.

XXIII. Your orator avers that a very small per cent of the Gulf Company's traffic consists of business passing through the State of Texas, and hence that if its interstate rates are low the people of Texas are the direct beneficiaries of the same, and no complaint has been made against the Gulf Company by the shipping public that such rates are too low, and the Gulf Company has not been invited by anyone or by the said Commission to increase such interstate rates, nor has any desire been expressed, by said Commission that they should be so increased, and hence your orator avers that as long as said interstate rates are satisfactory to the people of Texas that the same furnishes no excuse of justification for the said Commission to attempt to reduce the Gulf Company's local rates to such extent as to deprive it of the power of earning proper revenue.

Your orator further avers that the reduction of such local rates by the enforcement of the said tariffs of the said Commission will, in a great many instances, if not in all, result in a forced reduction of the Gulf Company's interstate rates and cause a further loss in revenue to the Gulf Company not included in the statements or allegations of loss heretofore made. Such corresponding reduction in interstate rates will follow, owing to the competitive conditions over which the Gulf Company and the said Commission have no control, which have been heretofore partially explained.

XXIV. At one of the sessions of the said Commission aforesaid its chairman stated that the fact that the State of Texas had made large land grants in aid of the construction of the railroads, should be considered in the fixing of freight rates. Your orator alleges that the Gulf Company only receive land grants on about 132 miles out of 958 constructed in the State, certificates for which were
78 sold at a nominal price, their then market value, and used in

connection with private subscriptions in aid of the construction of its road, in supporting the road and paying interest on its bonds at a time when its traffic was not sufficient to do so. That said donations of land and private subscriptions were made as an inducement for the construction of the road through a sparsely settled country, it being known that the same would not be self-supporting for several years, and would have to be maintained in the meantime, and hence your orator avers that the disposition made by the Gulf Company of such land grants was such as was contemplated by the State, and now affords no cause or reason for depriving the Gulf Company of the power of earning sufficient revenue to pay interest on its bonds and some return on its capital stock.

XXV. That the cotton represented in said Exhibit B as "beyond cotton," is cotton consigned or shipped to Eastern milling points, which, owing to the competitive conditions over which the Gulf Company has no control, it is forced to accept at less than its local rates and will have to do so in the future, and instead of making any gain on such cotton, which it would if it could charge the full commission rates thereon, owing to the competitive conditions referred to, which have caused a reduction in the through rates corresponding with the reduction in Texas rates made by said Commission, the through rates having been reduced in the same proportion as the Texas rates were so reduced, the enforcement of the Commission rates will cause a loss of revenue on such cotton of $23,338.45 100 per annum not included in the loss heretofore alleged. That including the specific losses heretofore alleged, which aggregate the sum of $ 98,913.18, and the loss on the beyond cotton referred to in this paragraph and other losses in rates on through freights, the enforcement of said tariffs and circulars of said Commission will cause a loss in revenue of and to the Gulf Company in the sum of $250,000 per annum. That the losses alleged herein, except as shown on page 45, are losses on Texas business alone, and do not include losses which will be sustained by the enforcement of the said tariffs and circulars in the Indian Territory.

XXVI. That under the constitution and general laws of Texas, and the charter or act of incorporation of the Gulf Company, it was authorized to issue bonds as hereinbefore alleged, and fix and agree with the purchasers thereof or the bondholders the rate or amount of interest to be paid thereon, by all of which it was implied that the Gulf Company would be permitted by the State of Texas to charge such rates on freight and passengers as would enable it to pay interest on such bonds.

79 That the Gulf Company is now charging as high passenger rates as are allowed by the State of Texas, and if its freight rates are now so reduced by the State of Texas, through its Railroad Commission, as to prevent it from earning sufficient revenue to pay operating expenses and interest on said bonds, the obligation of the contracts aforesaid between the Gulf Company and the State and said bondholders will be impaired, in violation of the Constitution of the United States and of the State of Texas.

XXVIa. That unless restrained from so doing said Commission will hereafter deliver to the Gulf Company other and further tariffs

or orders, which if enforced will cause further and additional reductions in the rates and revenue of the Gulf Company.

XXVII. That under and by virtue of the terms of the said commission law the Texas Railroad Commission are required to prosecute, and, as judges, to hear their own complaints, as well as act as executives or executioners in enforcing their decrees or judgments.

XVIII. That by section 5 of the commission law it is provided that in all actions between private parties and railway companies, brought under the commission law, the rates, charges, rules and regulations prescribed by the Commission, shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 thereof.

That by section 6 it is provided in substance that if any railroad company or any other party in interest is dissatisfied with any rate adopted by the Commission, such dissatisfied party may file a petition in any court of competent jurisdiction in Travis county, Texas, against the said Commission as defendant, and either party may appeal to the appellate court having jurisdiction of the cause.

Section seven provides in substance that in all actions under section six, the burden of proof will rest with the plaintiff to show by clear and satisfactory evidence that the rates complained of are unreasonable and unjust. That by section seventeen of the commission law if the Gulf Company refuses to put the tariffs of
80 said Commission into effect it will be subject to a penalty to each individual shipper of not less than $125 nor more than $500 on each shipment where it shall charge more than the rate fixed by the Commission, and that on each such shipment will be subject to a penalty recoverable by the State of Texas of not less than $100 nor more than $5,000, the said penalties to be recoverable in the name of the State in the proper court in Travis county, or any county to or through which the said railroad may run, by the attorney general or under his direction. That section twenty-three provides that all penalties provided for by the Commission law shall be cumulative of each other, and a suit or recovery of one shall not be a bar to the recovery of any other penalty. Your orator avers that such remedy attempted to be provided by said commission act by suit in some court of competent jurisdiction in Travis county is wholly inadequate, because under the terms of the said commission law the said rates, which, as heretofore shown, are unreasonable and unjust, and such as will not enable the Gulf Company to earn its operating expenses and interest on its bonds, and probably not more than thirty or forty per cent. of the interest on its bonds will be in force and effect during the pendency of such suit, and the Gulf Company will thereby be *derived* of its property without due process of law in violation of the Constitution of the United States and of the State of Texas, and the obligation of said contract between the Gulf Company and its bondholders will be impaired in violation of the Constitution and laws of the United States and of the State of Texas. And further, because under the statutes of the State of Texas as construed by the courts of the State, in any such suit, if it saw fit, the State or Commission could secure a contin-

nance of the case for six months by subpœnaing a number of witnesses, one or more of whom will, in all probability, fail to appear when the case is first called for trial, and in all probability at least twelve months will expire after the filing of such suit before the final termination of the same could be had in the appellate court, during which time the Gulf Company would suffer irreparable injury and loss under the enforcement of said tariffs, as no provision is made for restitution in the event it is finally held that the said tariffs of said Commission or any of them are unjust or unreasonable.

81 And further, if the Gulf Company succeeded in such a suit in having the tariffs of the Commission or any of them declared unjust and unreasonable, the said Commission, after twenty or thirty days, could issue tariffs in their places with rates higher yet still unreasonably low, and the same litigation or suits would again have to be prosecuted, and if again successful the said Commission could again make the rates higher yet still unreasonably low, and so on, and the Gulf Company would almost interminably be deprived of its property without due process of law, and in violation of the obligation of the contract with its bond-holders; and, because, further, your orator is advised by its counsel, and believes and therefore charges, that it is doubtful whether under the Constitution of Texas any court of Travis county would have jurisdiction of such a suit.

Your orator avers that if the Gulf Company does not continue said tariffs of said Commission in effect it will be subjected to a multiplicity of suits, not only by the State of Texas through its attorney general in Travis county, but under his direction in various counties through which its road extends, but by numerous individual shippers, for the penalties provided for in the said commission law; that in such suits, by section 5 of the commission act, the Gulf Company would be prevented from showing the unreasonableness or unjustness of rates as fixed by said Commission, and even if the courts of Texas should hold that said section, in so far as it prohibits the Gulf Company from making such showing is unconstitutional, that it would be very burdensome and expensive to a large and great extent for it to have to produce in each and all of said suits the necessary evidence to show the unreasonableness and unjustness of the said Commission's rates, and will also be subjected to great expense in employing counsel to defend such suits, and in loss of time of its officers in giving the necessary attention thereto, and the pendency of such suits for penalties will aggregate such enormous amounts in a short time that it will have a tendency to depreciate the value of the Gulf Company's property, stocks and bonds, to the injury and damage of the stockholders and bondholders; that the value of the Gulf Company's property consists

82 in its being allowed to charge such rates for its services as will enable it to earn a fair remuneration on the investment and to pay interest on its bonds, and that the rates of the Commission, if enforced will deprive it of the power to do so, and will to a certain extent destroy the value of its property and appropriate the same to the use of shippers and others without compensation and without due process of law.

Your orator avers that the same question will be involved in all such cases and that the same can be tried and the merits fairly determined in one case.

XXIX. Your orator is informed, believes and therefore alleges, that the Gulf Company believing, in case of its refusal so to do, it would be subjected to almost innumerable suits for such penalties, not only by the said Culberson, but by individual shippers, under pressure of the enormity of the penalties which would aggregate in a short time an immense amount, and the probability of innumerable judgments being rendered against it, has put said Commission tariffs numbered from 1 to 9, both inclusive, and said circulars, except so much of circular 34 as affects Inter-State shipments, into effect, and will put others in effect when issued by the said Commission, unless restrained by your Honors, and is now charging the rates prescribed by the said Commission therein; and that if the said Gulf Company continues so to do, which it will unless restrained by your Honors from so doing, its earnings will not be sufficient to pay the interest on the said first mortgage bonds, which are secured by a lien prior to the lien of said second mortgage bonds, leaving nothing to be applied toward the payment of interest on said second mortgage bonds, which will result in a default by the Gulf Company in the payment of the interest on said second mortgage bonds whereby the bondholders of the said second mortgage bonds will not only be deprived of interest on their bonds, in violation of all the constitutional provisions herein referred to, but will practically be deprived of their property, for as the value of a railway property depends upon its earning capacity, and as under the tariffs of the said Commission the said Gulf Company will not earn more than enough, if enough, to pay the interest on the said first mortgage bonds, and as the value of the second mort-

83 gage bonds depends upon the ability of the railway property to earn something toward the payment of interest upon them, in a sale under foreclosure of said second mortgage subject to the lien of the first mortgage, only a nominal amount would be realized entirely and grossly insufficient to pay the said second mortgage bonds, whereby said second mortgage bondholders will be deprived of their property, without due process of law, and the same will be appropriated to the use of shippers and others without compensation, in violation of the constitution of the State of Texas and the United States, and they will be denied the equal protection of the law, in violation of the constitution of the United States, and the contract between the Gulf Company and the said bondholders, sanctioned by the State of Texas, will have its obligation impaired, in violation of the constitution of the United States and of the State of Texas. That unless speedy relief is obtained the said second mortgage bondholders will sustain great and irreparable loss under the purported tariffs of the said Commission. That if relief herein is granted only against the said Gulf Company, it will nevertheless be subjected to a multiplicity of suits by the said Culberson, and by a great number of shippers and consignees, and that even if the Gulf Company shall not finally be required to pay judgments therein, it will be subjected to great expense and loss in defense of the same, which will to that extent impair the value of

the second mortgage bonds, and to that extent deprive the Gulf Company of money and funds which otherwise would be applied to the payment of interest on said bonds, and the pendency of such suits will impair the market value of said bonds.

XXX. In view of the provisions of section 16 of the charter of the said Gulf Company, which expressly reserves to the legislature the right to fix the rate of charges on the road of the said
84 company by general laws, your orator denies the power of the said legislature to establish rates for the said company through the agency of a railroad commission, as has been attempted to be done, as herein shown.

XXXI. That your orator has been requested by a majority of the holders of the said second mortgage bonds to institute and prosecute this suit, and to take such other action it may be deemed needful for their protection.

XXXII. Your orator shows that this cause is a suit in equity of a civil nature, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and that this cause is a suit arising under the constitution and laws of the United States, to-wit: Under section 10 of article 2 of the constitution, and under section 1 of article 14 of the amendments to the constitution; and that in this cause and suit there is a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid.

In consideration whereof and for as much as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendants hereinafter named may answer the several matters and things hereinbefore set forth, as fully and particularly as if the same were herein again repeated, and they were thereto interrogated, and that an injunction may issue out of this court restraining and enjoining the said Gulf, Colorado & Santa Fe Railway Company from continuing in effect the tariffs, circulars or orders of the said Commission, and from putting the said other tariffs or orders or circulars into effect, or either or any of them herein described, and from continuing to charge the rates specified in said tariffs, circulars or orders, or either or any of them, and the said Reagan, McLean and Foster and the said Charles A. Culberson, claiming to act as such attorney general or otherwise, and each of them, from instituting or authorizing or directing any others to insti-
85 tute any suit or suits, action or actions against the Gulf Company for the recovery of any penalties under and by virtue of any of the provisions of the said commission law, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs, or either of them or both combined, or under and by virtue of the said tariffs of the said Commission, or either of them, from claiming or instituting suit or suits against the Gulf Company for the recovery of any damages, overcharges, penalty or penalties, under or by virtue of said commission law or any of its provisions or under and by virtue of the said tariffs, orders or circulars of the said Commission or any or either of them, or under and by virtue

of the said commission law and the said tariffs, orders or circulars, or any or either of them combined, and restraining the said Commissioners, and each of them, from issuing or delivering to the Gulf Company, or causing to be delivered to it, any further tariff or tariffs, circulars or orders, and that in the meantime until the hearing hereof your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause may have all injunctions herein prayed for made perpetual, and that said tariffs and circulars of said Commission, and each of them, may be cancelled and declared null and void by decree of this court, and that a mandatory injunction may be issued to the said Commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them, and that your orator may have such further and other relief as this case may require, as well as all costs: may it please your Honors to grant unto your orator such temporary restraining order, and after hearing such writ of injunction and the writ of subpœna against the said defendants, the Gulf, Colorado & Santa Fe Railway Company, John H. Reagan, L. L. Foster and Wm. P. McLean and Chas. A. Culberson, commanding said defendants and each of them to appear in this
86 court at some certain day to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be passed herein.

[L. S.] THE FARMERS LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*
Attest: E. S. MARSTON, *Secretary.*

TURNER, McCLURE & ROLSTON,
FARRAR, JONAS & KRUTTSCHNITT,
AND WEST & McGOWN, [L. S.]
Complainant's Solicitors.

HERBERT B. TURNER,
JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT, *Of Counsel.*

STATE, CITY AND COUNTY OF NEW YORK, *ss.:*

Roswell G. Rolston, being duly sworn, says that he is the President of the Farmers' Loan and Trust Company, the plaintiff above named, and has been such president for a number of years past; that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

R. G. ROLSTON.

Sworn to and subscribed before me this 8th day of April, 1892.

W. B. CARDOZO, No. 145,
[L. S.] *Notary Public, New York County.*

342 In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, and Others, Defendants.

In Equity. No. —.

The answer of the defendant The Gulf, Colorado and Santa Fe Railway Company to the bill of complaint herein and amendment thereof.

This defendant, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception or otherwise to the many errors and insufficiencies in said bill and amendment contained, for answer thereto, or unto so much or to such parts thereof as this defendant is advised it is material for it to make answer unto, answering, says:

That, for the purpose of avoiding unnecessary prolixity in this answer, this defendant, inasmuch as it cannot deny, especially admits all the allegations in the said bill of complaint and amendment contained, except in so far as the same or parts thereof shall be hereinafter denied, modified, or qualified.

In regard to the allegations contained in the bill of complaint and amendment purporting to show or state the diminution of revenue which would result to this defendant upon its adopt-
343 ing and enforcing the rates and tariffs promulgated by the railroad commission, this defendant avers and alleges that the actual diminution and reduction of revenue consequent upon the enforcement and operation of such rates and tariffs largely exceeds the estimates and statements alleged in the bill.

This defendant specially admits that, as alleged in the twenty-ninth clause or subdivision of the bill of complaint, it has put the commission tariffs therein referred to and others into effect, but this defendant avers and alleges that although said rates and tariffs so fixed by said commission are unfair, unjust, unreasonable, and confiscatory it has put the same into effect, fearing that upon its failure or refusal so to do it would be subjected to an almost innumerable number of suits for the fines and penalties prescribed by the act of April 3rd, 1891, & by the provisions of said act of April 3d, 1891, this defendant would be deprived of its lawful defenses, and that by reason of the enforcement of said fines and penalties and the recovery of judgments in said suits and the enormous outlay and expense for fees, costs, and the like necessarily attendant upon such litigation, the consequences of its refusal to adopt and enforce the rates of said commission might be even more disastrous than the operation and effect of said unreasonable rates; and this defendant, now submitting itself to such order or decree as this honorable court may make herein, avers that it is remediless and without protection, except in this honorable court and in a proceed-

ing in this nature, and this defendant prays that such decrees and orders as this honorable court may make herein shall be made with a due regard of its protection in the premises.

Now, having fully answered, this defendant prays to be
341 dismissed hence with its reasonable costs and charges in this behalf sustained.

GULF, COLORADO & SANTA FE RAILWAY COMPANY,
By J. W. TERRY,
Solicitor for Gulf, Colorado and Santa Fe Railway Co.

GEO. R. PECK, *Of Counsel.*

UNITED STATES OF AMERICA, }
Western District of Texas, } ss.:

W. E. Lufkin, being duly sworn, says that he is auditor of the defendant Gulf, Colorado and Santa Fe Railway Company, named in the foregoing answer; that he has read the said answer and knows the contents thereof, and that the allegations in said answer, so far as they relate to matters within the knowledge of deponent, are true, and so far as they relate to other matters he believes them to be true.

W. E. LUFKIN.

Sworn to and subscribed before me by the said W. E. Lufkin this the 4th day of June, 1892.

C. M. KEMP,
[L. S.] *Notary Public, Galveston County, Texas.*

(3233.)

341½ [Endorsed:] 190. In the circuit court of the United States for the western district of Texas, in the fifth circuit. In equity. No. 190. The Farmers' Loan & Trust Company, trustee, complainant, against The Gulf, Colorado & Santa Fe Railway Company, John H. Reagan, and others, defendants. Answer of the defendant The Gulf, Colorado & Santa Fe Railway Company to the bill of complaint therein and amendment thereof. J. W. Terry, solicitor for the Gulf, Colorado & Santa Fe Railway Company. Geo. R. Peck, of counsel. Filed June 6, '92. B. G. Duval, clerk, by D. H. Hart, d'y.

345 In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit.

In Equity. No. —.

FARMERS' LOAN & TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, Complainant,
against
FARMERS' LOAN & TRUST COMPANY, Trustee, JOHN H. REAGAN, *et al.*, Defendants.

Now comes the Gulf, Colorado & Santa Fe Railway Company and prays and moves for an order allowing it to file the accompanying cross-bill.

J. W. TERRY,
Solicitor for Cross-complainant, The Gulf, Colorado & Santa Fe Railway Company.
GEO. R. PECK,
Of Counsel.

It is hereby ordered that the accompanying cross-bill in the above numbered and entitled cause be filed by the clerk of the United States circuit court for the western district of Texas, in the fifth circuit, at Austin, Texas.

DON A. PARDEE,
Circuit Judge.

345½ [Endorsed.] 190. In the circuit court of the United States for the western district of Texas, in the fifth circuit. In equity. No. 190. Farmers' Loan & Trust Company, trustee, complainant, against The Gulf, Colorado & Santa Fe Railway Company, John H. Reagan, *et als.*, defendants. The Gulf, Colorado & Santa Fe Railway Company, complainant, against Farmers' Loan & Trust Company, trustee, John H. Reagan, *et als.*, defendants. Motion of G., C. & S. F. Ry Co., complainant, for leave to file cross-bill. Filed July 2, '92. B. G. Duval, cl'k, by D. H. Hart, d'y.

345½ In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit.

In Equity. No. 190.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN F. REAGAN, *et als.*, Defendants.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, Complainant,
against
FARMERS' LOAN AND TRUST COMPANY, Trustee, JOHN H. REAGAN, *et al.*, Defendants.

Cross-bill of the Gulf, Colorado and Santa Fe Railway Company.

J. W. Terry, general solicitor of the Gulf, Colorado and Santa Fe Railway Company.
Geo. R. Peck, of counsel.

Filed July 2, '92.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

346 In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant, *against* THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN F. REAGAN, *et als.*, Defendants:	In Equity. Original Bill No. —.
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, Complainant, *against* FARMERS' LOAN AND TRUST COMPANY, Trustee, JOHN H. REAGAN, *et als.*, Defendants.	Cross-bill.

Cross-bill of the Gulf, Colorado and Santa Fe Railway Company.

To the judges of the circuit court of the United States for the western district of Texas, in the fifth circuit, sitting in equity:

347 The Gulf, Colorado and Santa Fe Railway Company, a corporation created by and existing under and by virtue of the laws of the State of Texas, and a citizen and resident of that State, by leave of court first had and obtained, brings this its cross-bill of complaint against The Farmers' Loan and Trust Company, trustee, the complainant herein, The Railroad Commission of Texas, organized under an act of the legislature of the State of Texas, approved April 3d, 1891, and which is a citizen of the State

of Texas and whose office is in the western district of Texas and which is a resident and inhabitant of said district, and John H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, and constituting said railroad commission of Texas, and Charles A. Culberson, a citizen and resident of said State. And thereupon your orator complains and shows unto your honors, as follows:

That on or about the 30th day of April, 1892, the said Farmers' Loan and Trust Company, as complainant, filed and exhibited in this court its bill of complaint against your orator and against said Reagan, McLean and Foster and said Culberson as defendants, wherein and whereby the said Farmers' Loan and Trust Company alleged in substance:

That the defendants Reagan, McLean and Foster, claiming to act as the railroad commission of the State of Texas, appointed under and by virtue of said act of the legislature of the said State, approved third April, 1891, had announced and undertaken to establish and make effective as against your orator and other railway companies operating railroads in the State of Texas certain rates, tariffs, schedules, orders and classifications for the transportation of the commodities therein described over the lines of railway of your orator, and of other railroad companies in said State of Texas.

That the complainant was the trustee named in a second mortgage executed by your orator to secure certain bonds which were outstanding to the aggregate amount at par of $8,464,000, which had been sold to purchasers in good faith for value. That
348 said mortgage was subject to the lien of a prior mortgage covering the property of your orator and securing bonds outstanding to the amount of $12,636,000.

That the said rates, tariffs and classifications were not established by said commission fairly, nor in the method required by said act of April 3d, 1891, nor upon due and proper notice and hearing; nor in accordance with the evidence, showing and information given, afforded and available to the commission. That said rates, charges and classifications were unreasonable, unjust and confiscatory, and would operate, if adopted by your orator, to reduce its earnings in a sum exceeding $250,000 per annum, and to impair and diminish the earning capacity, and hence the value, of its property pledged to secure said second-mortgage bonds, and to destroy the property and interests of the holders of the bonds secured by said mortgage, for whom said complainant is trustee, and to take the same without due process of law, and to deny to said trustee and to the bondholders represented by it the equal protection of the laws. That the enforcement of said rates would prevent your orator from earning the interest upon its said second-mortgage bonds, or any part of the same, and would destroy the ability of your orator to earn sufficient to pay the interest on said first-mortgage bonds, secured by lien prior to the lien of said second-mortgage; threaten default and foreclosure of said first mortgage and the sale of your orator's railroad and property, thus depriving the holders of the bonds secured by said second mortgage not only of the interest on their bonds, but also of their property, as

the value of said property consequent upon its diminished earning capacity under the tariffs as prescribed by said commission would be greatly diminished, and that on a sale or foreclosure only a nominal amount would be realized which would be grossly insufficient to pay said second-mortgage bonds.

That the rates, charges, tariffs and rules of the commission were made by said act conclusive in all cases, except in a direct
349 proceeding to test the reasonableness thereof, to be instituted in some court of competent jurisdiction in Travis county, Texas, and that multiplied and excessive fines and penalties were prescribed by said act for any violation of any order of said commission or departure from the rates, charges and tariffs fixed by said commission. That by reason of the fact that your orator would be by operation of said act remediless in proceedings against it for such multiplied and excessive fines and penalties and alleged damages in case it disregarded the unreasonable rates, tariffs and charges of said commission, your orator had feared to refuse to adopt and enforce, and had already adopted and proposed further to adopt and enforce, the said unreasonable, unfair and unjust rates, charges and tariffs.

The complainant in and by said bill of complaint prayed for a decree canceling and annulling the tariffs already established by the commission and restraining it from issuing and delivering to your orator any further tariff or tariffs, circulars or orders, and restraining and enjoining your orator from continuing in effect the tariffs, circulars or orders of said commission, or putting any further tariffs, orders or circulars into effect, and enjoining the institution of suits and proceedings against your orator for alleged violations of said tariffs and orders of said commission, or for the recovery of any fines or penalties for such alleged violations.

And your orator further shows that on or about said 30th day of April, 1892, the said complainant amended its original bill, by filing an amendment thereto, wherein, among other things, it showed that in addition to the tariffs, circulars and orders described in said bill of complaint, said commission had issued and had caused to be delivered to the agent of your orator certain other tariffs, circulars and orders (which said tariffs, circulars and orders were filed therewith and marked "Exhibit G," and made part thereof), and that the operation and effect of said tariffs, circulars and orders were to cause serious reductions to the revenue of your orator, in
350 addition to the amounts set forth in said bill, to an amount estimated at the sum of $50,000 per annum, and further showing that said additional tariffs, circulars and orders were not duly or lawfully fixed as prescribed by law. And said complainant further showed that the enforcement of the rates of said commission had resulted in a loss to your orator during the eight months ending February 29th, 1892, of over $400,000 in comparison with the same period ending February 28th, 1891.

For the full statements, allegations and prayer of said bill and for the full terms and contents of the exhibits filed therewith, your

orator refers to said bill and exhibits respectively with the same effect as if they were herein fully incorporated and set out.

Your orator has filed its answer to said original bill of complaint, substantially admitting—as it could not deny—the allegations thereof, and now, to the end that it may represent to your honors its own rights and interests and those of its stockholders in the premises, and may have the redress and relief to which it and they are entitled, it files and exhibits, with leave of court as aforesaid, this its cross-bill of complaint, and further shows unto your honors as follows:

Your orator avers that, in addition to its bonded indebtedness as alleged in the bill of complaint, it has lawfully issued for value and there is now outstanding its capital stock to the amount of $4,560,000. That its said bonds and stock were issued in the manner and for the objects prescribed and authorized by its charter, and the same represent a part of the cost to your orator of its railroad, property and equipment, and of the renewal, replacement, improvement, betterment and extension thereof, and represent the fair value of said property. That your orator has necessarily laid out and expended many large sums of money for the betterment and extension and equipment of its property not represented by its said bonds and stock, and to this end has devoted a large portion of the earnings of said railroad and property in order to put the
351 same in the best attainable condition and to afford the best facilities and service to the public; and in this behalf your orator avers and shows that for the period between July 1, 1886, and June 30, 1891, your orator has expended for that purpose a sum in excess of $2,500,000, and that said sums so expended during said period on the then constructed line of road was expended chiefly for improvements of such character as are ordinarily paid from the earnings of a railroad. That, in order to obtain said sums of money so laid out and expended in the improvement and betterment of said railroad as aforesaid, and to meet deficits of earnings to pay operating expenses and interest on bonds, your orator has been compelled to borrow large sums of money, and, in consequence thereof, your orator now owes a floating debt, including unpaid interest coupons, of upwards of $3,300,000, incurred by failure of its earnings to pay its interest and fixed charges, and the amount so expended for improvements. That for a period of eight years the stockholders of your orator have not received any dividend or return whatever for or upon their investment or stock. That notwithstanding the inadequacy of your orator's earnings to provide a fair and reasonable return upon the capital invested in or the value of your orator's property, and notwithstanding that the rates and charges for transportation in force upon your orator's railway at the time said commission was established, were, as your orator now alleges the fact to be, very low and inadequate, and notwithstanding these conditions were, as your orator verily believes, well known to the commission, and naught to the contrary thereof appeared, said commission, without warrant or justification, and notwithstanding the offer of your orator to submit to said commission proof of

the lowness of said rates, proceeded to establish the reduced, unreasonable and unjust tariffs and regulations set forth in the bill of complaint and in the tariffs and circulars of said commission, and has undertaken and claims the right to require conformity therewith on the part of your orator. And in this behalf your
352 orator here adopts and avers specially the statements and allegations contained in the tenth, eleventh and nineteenth clauses or subdivisions of the bill of complaint herein, and avers that the same are true in all respects.

And your orator specially adopts and here avers the allegations contained in the twelfth, thirteenth, fourteenth, fifteenth, sixteenth and twenty-fifth clauses or subdivisions of the bill of complaint, and also the allegations contained in the amendment to said bill of complaint, being clause or subdivision 25*a* thereof; except that your orator verily believes, and so avers the fact to be, that the probable loss and diminution to the revenues and earnings of your orator are underestimated and understated in said clauses and subdivisions of said bill of complaint, and will, if said tariffs, circulars and orders of said commission are continued in force and effect, largely exceed the amount so estimated in said bill of complaint.

And your orator here adopts and specially avers all the allegations contained in the eighteenth clause or subdivision of the original bill of complaint, and states that the same are true, and asks that they be regarded as here made with the same effect as if they were herein fully incorporated and set forth.

Your orator avers that by circular No. 34, established and published by the said railroad commission, set forth in the original bill of complaint, the commission undertakes to compel your orator, upon the demand of the owner of any freight or property contained in any car owned by your orator or in its possession, to surrender and deliver said car to other railroad companies whose lines connect with those of your orator, to be used by said other railroad companies upon its own lines and connections in the transportation of the property contained in said car to any place off the line of your orator's railway designated by the owner of said property or freight. That under the terms of said circular the cars of your orator may be taken from its possession and used as above stated,
and used without its consent, without adequate compensa-
353 tion and without other compensation for use thereof while off your orator's lines and out of its possession than a rental fixed by the commission covering the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

Said circular further requires your orator, upon the tender to it of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation

owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over your orator's railway, although your orator owns and possesses a large number of cars for the transportation of property received by it as a common carrier, and has frequently a sufficient number of idle cars available for such use. And said circular further requires that, after such car has been transported to the point designated by the owner of the freight contained therein, the same shall be returned and rehauled by your orator over its railway and be redelivered to the company from which it was received without any compensation whatever for such carriage and service.

And said circular further requires your orator to perform without compensation or reward any necessary switching service in receiving from or delivering to any connecting railway line such car.

Your orator submits that, in the respects above recited, your orator is, and would be by said order and circular, and by the requirements of the commission therein contained, deprived of its property without due process of law, and not in due course of law, contrary to section 1 of article 14 of the amendments of the
354 Constitution of the United States, and sections 17 and 19 of article 1 of the constitution of the State of Texas.

That the effect and operation and, as your orator is informed and verily believes, the purpose of said circular is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as a point of temporary destination, and the shipment rebilled from the latter point to its actual and final destination; the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect, your orator shows that said order, rate and rule, so announced and published as said circular No. 34, and said act of the legislature of the State of Texas purporting to confer upon said railroad commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void because in conflict with and in violation of section 8 of article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the amendments thereto.

Your orator here adopts and avers all of the allegations contained in the fourteenth paragraph of said original bill of complaint of the Farmers' Loan and Trust Company, and shows that in section 5 of said act of the legislature of Texas, establishing the said railroad commission, it is provided that in actions between

private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such
355 action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 of said act. So that your orator alleges that unless the relief herein sought be granted, the failure of your orator to adopt and put into effect and use the unreasonably low and uncompensatory rates heretofore prescribed by said commission would subject it to a multiplicity of suits brought by shippers for the penalties provided in section 17 of said act; and that in such suits it would be deprived of the lawful defense that the rates and charges so prescribed by said commission were and are unreasonable; and, so concluded and deprived of lawful defense, it would be subjected to innumerable penalties, ranging from $125 to $500 in each case, and would thereby be denied the equal protection of the laws and deprived of its property without due process of law, and in a proceeding wherein its liability was fixed in advance, contrary to the Constitution and laws of the United States and to the constitution and laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers it would be deprived of the right to a trial by jury of the issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to section 15, article 1 of the constitution of the State of Texas.

Your orator avers that section 6 of said act provides, that any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, &c., in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant; and section 7 provides, that in all trials under section 6, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that
356 the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it. Said sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including your orator, the right to make the defense that any charges, regulations or classifications of the commission are unreasonable and (with said exception) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful de-

fense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and laws of the United States, and especially section 1 of article 14 of the amendments to said Constitution, and to the constitution and laws of the State of Texas, and especially to sections 3 and 19 of article 1 of said constitution of Texas.

Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis county has found that such rate or charge is not reasonable, fair or just; and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair or unjust may only thereafter be made in suits instituted by individual shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties
357 in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of said railway companies to make a lawful defense, pending the institution by said railway companies, in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense, and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by section 7 of said act. In the meantime innumerable judgments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act, of contesting in a court of competent jurisdiction of Travis county the reasonableness, fairness or justness of any rate, charge or act of the said commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to the operation of said act; for, as your orator is further advised and alleges, under the constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your orator further alleges that the constitution of the State of Texas (article V) prescribes a complete judicial system for said State, and the legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the constitution of the State of Texas, or any body or tribunal constituted by legislative act, with any judi-

cial powers or jurisdiction whatever. And your orator avers
358 that under the limitations of jurisdiction prescribed by the said constitution of the State of Texas, the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in section 6 of said act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them, or either of them, by said sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time your orator would suffer great and irreparable loss and injury under the enforcement of said tariffs or penalties, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said commission, or any of them, are unjust and unreasonable.

Your orator further avers that the penalties denounced by said act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced, and that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to it and to other railway
359 companies, subject to the operation of said act, to the end that they may be thereby compelled and coerced into the adoption of the rates and charges prescribed by said commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto, and the operation of said act in this respect is harsh, unreasonable and confiscatory, and your orator avers that said act constituting said railroad commission, is, in this respect, contrary to and in violation of the constitution of the State of Texas.

Your orator shows that under the fear and apprehension of the excessive, immoderate and multiplied fines, penalties and damages denounced and provided for in said act, and the enormous outlays and expenses for fees, costs and the like necessarily attendant upon the litigation of suits for the recovery of the same and notwithstand-

ing that it believes and here avers that the tariffs, charges and orders established by said commission are unfair, unjust and unreasonable, and notwithstanding your orator claims that the same cannot be made lawfully applicable to it, it has, under protest, adopted the same and enforced the same upon its lines of railway.

Your orator avers that its mortgage bonds and stock were made and issued by it lawfully and in accordance with the powers and limitations conferred and prescribed by its charter; and your orator further avers that it was not and is not competent for the legislature of the State of Texas, directly or through any instrumentality or agency by it created, to fix and establish such rates or charges for service by it performed as to so affect or diminish its earnings and revenues that the same will not be sufficient to pay the interest upon its said bonds, and in addition thereto a fair reward to your orator for the service by it performed. And therefore, your orator avers that said act of April 3d, 1891, and said commission's
360 tariffs, rates and regulations are, so far as they purport or are intended to apply to your orator, or so far as they may have been or may be applied to your orator and its business, void and inoperative and violative of the rights and exemptions secured to your orator by its charter.

Except as herein and hereby qualified your orator adopts and avers all the allegations contained in the said original bill of The Farmers' Loan and Trust Company, complainant, and asks that this averment be deemed and taken to be equivalent to the incorporation herein of all the said allegations, as so qualified, contained in said bill.

In consideration whereof, and forasmuch as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and they were thereto interrogated; and that an injunction may issue out of this court restraining the said Reagan, McLean and Foster and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against your orator for the recovery of any penalties under and by virtue of any of the provisions of the act of the legislature of Texas, approved April 3d, 1891, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs, or either of them or both combined, or under and by virtue of the said tariffs or orders of the said commission, or either of them, from bringing or instituting suit or suits against your orator for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said commission law or any of its provisions, or under and by vir-
tue of the said tariffs, orders or circulars of the said commis-
361 sion, or any or either of them, or under and by virtue of the said commission law and the said tariffs, orders or circulars

or any or either of them combined, and restraining the said railroad commission of Texas and said Reagan, McLean and Foster, and each and all of them, from making, issuing or delivering to your orator, or causing to be promulgated, established or made effective against it, any further tariff or tariffs, circulars or orders, and from attempting so to do; and that in the meantime until the hearing hereof your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars, and orders heretofore made and issued by said railroad commission of Texas or by said Reagan, McLean and Foster, acting or claiming to act as said railroad commission of Texas, and each of them, may be canceled and declared to be null, void and of no effect by a decree of this court, and that a mandatory injunction may be issued to the said commission and said commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them, and that such orders and decrees as may be made under the original bill of complaint herein of the Farmers' Loan and Trust Company shall be adapted to the protection of your orator in respect of the matters herein alleged, and that your orator may have such further and other relief as this case may require as well as all costs. May it please your honors to grant unto your orator a writ or writs of subpœna to be issued out of and under the seal of this honorable court, and directed to the defendants The Farmers' Loan and Trust Company, The Railroad Commission of Texas, John H. Reagan, L. L. Foster and William P. McLean and Charles A. Culberson, commanding said defendants and each of them to appear in this court at some certain day to be therein named, and to answer the premises,
362 but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be endered herein.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By J. W. TERRY, *Sol. for Texas.*
J. W. TERRY,
Solicitor for Cross-complainant The Gulf, Colorado and Santa Fe Railway Company.

GEO. R. PECK, *Of Counsel.*

STATE OF TEXAS, }
County of Galveston, } *ss:*

W. E. Lufkin, being duly sworn, says that he is auditor of The Gulf, Colorado and Santa Fe Railway Company, cross-complainant named in the foregoing cross-bill; that he has read the said cross-bill and knows the contents thereof, and that the allegations in said cross-bill, so far as they relate to matters within the knowledge of deponent, are true, and so far as they relate to other matters he believes them to be true. W. E. LUFKIN.

Sworn to before me this 13th day of June, 1892.

C. M. KEMP,

[L. S.] *Notary Public, Galveston County, Texas.*

362½ No. 190. Equity.

Amended Bill of Complaint.

United States Circuit Court, Western District of Texas, at Austin.
In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
versus
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants. } No. 190.

Farrar, Jonas & Kruttschnitt, Turner, McClure & Rolston & West & McGown, complainant's solicitors, Austin, Tex.

H. B. Turner, J. J. McCook, Jno. F. Dillon, E. B. Kruttschnitt, of counsel.

Filed Ap'l 30, '92.

B. G. DUVAL, *Clerk.*
By D. H. HART, *Dep.*

363 United States Circuit Court, Western District of Texas, at Austin. In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
versus
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants. } No. —.

To the honorable the judges of said court:

Complainant in the above entitled cause now amends its original bill of complaint herein filed by adding thereto as an additional paragraph, after paragraph 25 and before paragraph 26, the paragraph following, to wit:

25*a*. Further complaining your orator alleges on its information and belief that the said railroad commission of Texas has issued and caused to be delivered to the general freight agent of the Gulf Company, various tariffs, circulars and orders other than and
364 in addition to those described in the said bill of complaint, all of which said tariffs, circulars and orders appear in the printed documents or pamphlets filed herewith marked Exhibit "G," and made a part hereof.

That each and all of said tariffs, circulars and orders which apply to the business of the Gulf Company, except the circular on the subject of demurrage, will cause serious reductions and losses in the revenue of the Gulf Company which are not set forth in the bill of

complaint and are in addition to the losses set forth in the said bill, which are now estimated at the sum of $50,000 per annum.

That ten days' notice was not given the Gulf Company of the time and place where the rates and orders established by said tariffs and circulars were made, and that the same were not fixed or established at any time or place where the Gulf Company had notice thereof, or had an opportunity to be present and heard. The Gulf Company was not given an opportunity to be heard in respect to the matters contained in said tariffs and circulars or any or either of them. All of the allegations of the original bill of complaint, in so far as they are applicable, are here repeated with respect to said tariffs and circulars.

That during the eight months ending February 28th, 1891, the Gulf Company hauled 784,655 tons of freight, and during the eight months ending February 29th, 1892, it hauled 915,799 tons, an increase in tonnage of over 16½ per cent, and that on the basis of such increase in tonnage its freight earnings for the said eight
365 & 366 months ending in 1892 should have exceeded the freight earnings for the same period ending in 1891 in the sum of $439,581.25, while the freight earnings of the Gulf Company for the eight months ending in 1892, only exceeded its freight earnings for the eight months ending in 1891, in the sum of $194,044.53, showing a loss of $245,537.72, caused by the tariffs, orders and circulars of the said railroad commission; but your orator avers that the loss caused by the said tariffs of said railroad commission is even greater than above shown, in this: That during the eight months ending in 1892, the sum of $50,352.95 was credited to freight earnings on construction material used in the reconstruction of a part of the Gulf Company's lines, more than was so credited during the eight months ending in 1891, and that during the eight months ending in 1892, there was earned by the Gulf Company $29,194.30 on stone, more than it did during the eight months ending in 1891. That nearly all of said stone was hauled for the Government jetties at Galveston, and the rate on the same was not affected by the said commission; the sum of which amounts deducted from the excess in freight earnings, for the eight months ending in 1892, over those ending in 1891, makes the excess, $114,497.29, and but for the rates of said commission it would have been at least the sum of $439,581.25.

That owning to the increase in tonnage aforesaid, the operating expenses of the Gulf Company for the said eight months ending in 1892, as compared with the same months ending in 1891, have
367 increased, and the increase in operating expenses has been greater than the said increase in gross earning, so that the enforcement of the rates of the said commission has made the net earnings of the Gulf Company during the said eight months ending in 1892, less than they were for the same months ending in 1891, by at least the sum of $129,958.44, while if the rates had been the same during the two periods, the net earnings of the Gulf Company during the eight months ending in 1892, would have exceeded

those for the eight months ending in 1891, in the sum of at least $300,000.

That the rates of the said commission were not in effect during all of the said eight months, and had they been, the loss of the Gulf Company would have been greater that herein alleged.

Complainant reiterates each and every allegation in its original bill of complaint contained, and prays the court to allow this amendment to be filed, and for the same relief prayed for in its original bill of complaint; and your orators pray for all further orders and equitable relief in the premises.

FARRAR, JONAS & KRUTTSCHNITT,
TURNER, McCLURE & ROLSTON, AND
WEST & McGOWN, *Complainant's Solicitors.*

H. B. TURNER,
J. J. McCOOK,
JNO. F. DILLON,
E. B. KRUTTSCHNITT,
Of Counsel.

368 *Order.*

Let the above amendment to the original bill of complaint in the above cause be filed.

Affidavit.

Ernest B. Kruttschnitt, being duly sworn, deposes and says: That he is one of the solicitors of The Farmers' Loan and Trust Company, complainant, named in the bill of complaint in the above cause; that said complainant is absent from the State of Texas, and from this judicial circuit, and that all the allegations in the foregoing amendment contained are true to the best of affiant's knowledge, information and belief.

E. B. KRUTTSCHNITT.

Sworn to and subscribed before me, this 28th day of April, 1892.

[L. s.] E. M. BECKWITH,
Notary Public, Dallas Co., Texas.

369 In the Circuit Court of the United States, Western District of Texas, in the 5th Circuit. In Equity.

THE FARMERS' LOAN & TRUST CO., Trustee, Complainants, *vs.* THE GULF, COLORADO & SANTA FE R'Y CO. and JOHN H. REAGAN *et al.*, Defendants.	No. —. Original Bill.
THE GULF, COLORADO & SANTA FE R'Y CO., Complainants, *vs.* THE FARMERS' LOAN & TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.	Cross-bill.

To the honorable judges of said court:

The Gulf, Colorado & Santa Fe Railway Company, cross-complainant in the above-entitled cause, now amends its cross-bill herein filed, as follows, to wit:

First. By adding at the end of folio 58, on page 15, and preceding the words "In consideration whereof," the following words, viz:

"And that there has been necessarily expended in cash in the construction and equipment of the said railroads of your orator more than $24,310.00 per mile of road, and that the same could not now be reconstructed or duplicated for less than said amount per mile; that the railroads of your orator as aforesaid have at all times been operated as economically as practicable, and that its operating expenses have during the said five years and at all times been as reasonable and low in amount as they could be made, and that it has not been possible for your orator to operate said road for less than it has been operated; and herein your orator alleges

370 that for the year ending June 30, 1891, there were employed by your orator twenty general officers who received a total compensation of $60,021.00 or an average of $8.24 per day. Exclusive of its general officers its employees received during said year on an average $1.98 per day, and for the year ending June 30, 1892, there were employed by your orator twenty-one general officers who received a total compensation of $61,042.00 or an average of $8.03 per day, and exclusive of its general officers its employees received during said year on an average of $2.00 per day; and at all times your orator has secured the services of officers and employees as as cheaply as practicable and has employed no more than were necessary, and that the above were fair and reasonable rates of pay; that at all times your orator has secured supplies and material and property of whatever character used in the operation of its said roads at the cheapest market price and at as low rates as the same could be secured, and has secured and used no more than was actually necessary in the operation of the road; and your orator files herewith and makes part of its cross-bill, marked, respectively, Exhibits "H" and "I" copies of its sworn reports made by its officers to the railroad commission of Texas for the years ending respectively June 30 1891, and 1892, on the forms prescribed by said com-

mission, which show its operating expenses in detail, each and every item of which was reasonable in amount and as low as practicable, and every possible effort has been made by your orator to keep each and every item thereof as low as possible; that the decrease in your orator's rates made by the said commission have not and will not cause any such increase in the tonnage or business of your orator's said roads as will in any degree whatever make up or compensate for the loss in revenue caused by said reduction in rates. Your orator alleges that the loss in revenue sustained by your
371 orator during the time the said commission rates were in force and caused solely by the enforcement of such rates—that is during the eleven months ending Aug. 31, 1892, is and was as follows:

On foreign cotton	$75,385 90 or 24 %
Cotton via Galveston to eastern milling points in United States	24,148 58 or 47 %
Cotton shipped locally within the State of Texas	99,042 66 or 25 %
Cotton delivered to other railway companies by the Gulf Company for the transportation beyond the State	32,342 63 or
Grain and hay	40,459 71 or 25 %
Wood	3,197 55 or 18 %
Coal	4,714 80 or 29 %
Cotton-seed meal	4,785 18 or 18 %
Cotton-seed hulls	365 43 or 5 %
Cotton-seed oil	82 73 or 12 %
Cotton seed	10,117 96 or 17 %
Common brick	864 85 or 28 %
Fire-brick	86 88 or 21 %
Sand	73 14 or 7 %
Stone	8,772 57 or 9 %
Flour	6,967 17 or 21 %
Salt	4,773 96 or 34 %
Lumber, laths, & shingles	32,999 30 or 18 %
Cement	102 51 or 12 %
Plaster & hair	52 73 or 21 %
Cattle	8,086 95 or 21 %
Horses and mules	786 99 or 39 %
Sheep & hogs	631 90 or 34 %
Wool	4,947 19 or 13 %
Bones and junk	179 83 or 16 %
Melons	20 00 or 13 %
Vegetables	2 90 or 4 %
Beer	263 30 or 30 %
Empty beer kegs	63 00 or 51 %
Wrapping paper	47 32 or 21 %
Iron roofing	84 37 or 41 %
Making an aggregate loss of	$343,621 61

That with the exception of cotton, as above indicated, the said losses are computed only on freight between points within the State of Texas; that by foreign cotton is meant cotton transported from points within the State of Texas to Galveston and there shipped to foreign ports; that the earnings of your orator on said cotton is and was directly affected by the rates of the said commission for the reason that rates inserted in the bills of lading are made up by adding the commission rate to Galveston and the ocean rate to foreign points, and that it was not possible for
372 your orator's company to earn any greater revenue on the said cotton than was allowed by commission rates; that on cotton destined from Texas to eastern milling points the rates from points in the southern portion of the State are formed by adding the local rate to Galveston, which during the commission was the commission rate to the rates from Galveston, via New York, to such eastern milling points. The all-rail lines from such points, via St. Louis, desiring to haul any of such business were forced to make the same rate via their route as is made as aforesaid via Galveston, and in order to comply with the interstate commerce law were forced to carry at the rate thus made from all intermediate points between the Southern Texas and the northern boundaries of the State; and in order for your orator's company to participate in the hauling of said cotton from middle and northern Texas it was forced to carry at the same rate in hauling said cotton via Galveston, and thus, on freight from said sections of the State, being forced to accept less than its local rate to Galveston; that for the reasons above explained the reduction by the commission of the rate to Galveston forced a reduction in the rates to the said eastern milling points and caused a loss to your orator, aforesaid, in the sum of $32,842.63; that the said losses on each and all of said commodities were arrived at by computing the amount which your orator would have earned had it been allowed to charge the rates prevailing immediately prior to the time when the commission rates were issued, and which had been, with slight changes, prevailing for several years prior thereto on the freight actually moved during the said eleven months and taking from the amount so arrived at the amount which your orator's company actually did earn under the rates prescribed by the railroad commission. All of the said commission rates were not in effect during the said eleven months, and if they had been the losses of your orator's company
373 would have been greater than above shown and would have considerably exceeded the sum of $400,000.00; that the enforcement of the said rates of said commission will cause an annual reduction of your orator's revenue and earnings in at least the sum of $475,000.00; that each and all of the tariffs issued by your orator's company putting into effect the rates of said commission were issued under protest, and there were printed thereon by your orator's company "This tariff is issued by order of the railroad commission of Texas under protest, reserving the right to contest the same in the courts;" that said floating debt of your orator's company, including the unpaid interest coupons on its bonds secured

by said second mortgage at the end of the year June 30, 1892, and now, amounts to more than $5,000,000.00; that your orator's company is now and at all times has been charging as high passenger rates as are allowed by the State of Texas and is and has been deriving all the revenue possible from any and all sources, including interstate and foreign freights; that the divisions of through rates now and at all times heretofore enjoyed by your orator's company on interstate or foreign business moving over two or more lines has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas which your orator's company did or could derive under the rates fixed by the said commission—that is to say, for hauling the freight the same distance or performing the same service your orator's company received largely more revenue on business interchanged with interstate roads or on foreign business than it did or could receive on business exchanged under the rates of the said commission with roads within the State when the said freight was moving between points within the State and subject to the rate of the said commission, and that your orator's company's interstate and
374 foreign rates, as well as interstate and foreign rates of all other companies doing interstate and foreign business to and from Texas, now and at all times have been higher than the rates fixed for the same or corresponding distance by the said commission.

That on the 7th day of February, 1854, the legislature of the State of Texas passed an act which was duly approved by the governor and which among other things provided:

"SEC. 1. Be it enacted, etc., that all railroads which have been heretofore incorporated, or which shall hereafter be incorporated, or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act.

SEC. 15. It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road, should they be deemed too high; and may exercise the same power every ten years; provided that no reduction shall be made unless the net profit of the company for the previous ten years, the expenditures of the company being *bona fide*, and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per centum."

That, as aforesaid, your orator's company was incorporated and a portion of its road constructed while the said act was in effect, the same not having been repealed until the year 1879, when it was omitted by the commissioners who compiled the revised civil statutes of the State of Texas; that the said act was never expressly repealed by the legislature of the State of Texas, and if ever repealed

was only repealed by implication by the adoption *of* the
375 legislature of the statutes as revised by the said commissioners. Your orator avers that the said act entered into and formed a part of the charter contract between your orator's company and the State of Texas and between the bondholders aforesaid of your orator and your orator and the State of Texas.

That your orator's line in the Indian Territory did not cost more than the average of its lines in Texas; that same said Indian Territory lines *has* always been more cheaply operated, owing to the difference in conditions there prevailing, and that the net earnings of that part of the line have always been larger than the average of its lines in Texas.

Cross-complainant reiterates each and every allegation in its cross-bill of complaint, and prays the court to allow this amendment to be filed and for the same relief prayed for in its cross-bill of complaint, which is adopted by this amendment, and your orator prays for all further orders and equitable relief in the premises.

J. W. TERRY,
Solicitor for the Cross-complainant
The Gulf, Colorado and Santa Fe Railway Company.

GEO. R. PECK, *Of Counsel.*

[Endorsed:] No. 190. The Farmers' Loan & Trust Co., trustee, complainant, *vs.* The Gulf, Colorado & Santa Fe Railway Co. and John H. Reagan *et al.*, defendants. Amendment to cross-bill of the Gulf, Colorado & Santa Fe Railway Company. Filed Mar. 23, 1893. B. G. Duval, clerk, by D. H. Hart, d'y.

376 In the United States Circuit Court for the Western District of Texas, at Austin.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant, *v.* THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN *et al.*, Defendants.	No. 190.

The defendants John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson respectfully ask leave of the court to withdraw their answer heretofore filed by them in this cause to the original bill filed by complainant and the cross-bill filed by the defendant railway company and permit them to file a demurrer to said original complaint and cross-bill, so that the same may be considered as if no answer had been filed to said original and cross action, and that the demurrer was filed on the rule day to which the subpœnas were returnable.

The purpose of this motion is to raise in a simple and direct manner the questions of law involved in this cause, and it has no other object in view. No delay will be occasioned thereby and no injury to complainant or cross-complainant, inasmuch as the defendants offer to proceed immediately with the consideration of the de-

murrer, and if the same be overruled leave will not be asked to file answers to said original and cross actions, but judgment may be rendered on said demurrer and failure of defendants to answer the bill and cross-bill, from which judgment defendants will appeal.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Defendants.

[Endorsed:] No. 190. The Farmers' Loan and Trust Company, trustee, compl'nt, *v.* The Gulf, Colorado and Santa Fe Railway Company, John H. Reagan, *et al.*, defendants. Motion to withdraw answers and file a demurrer. Filed M'ch 20, '93. B. G. Duval, clerk, by D. H. Hart, d'y.

377 AUSTIN, TEXAS, *March* 23, 1893.

United States Circuit Court, Western District of Texas, at Austin.
In Equity.

MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TYLER SOUTHEASTERN RAILWAY COMPANY *et als.*	189	Original Bill.
THE TYLER SOUTHEASTERN RAILWAY COMPANY *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.*		Cross-bill.
THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *et als.*	188	Original Bill.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.*		Cross-bill.
THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TEXAS & PACIFIC RAILWAY CO., JOHN H. REAGAN, *et als.*	186	Original Bill.
378 THE TEXAS & PACIFIC RAILWAY CO. *vs.* THE MERCANTILE TRUST CO., JOHN H. REAGAN, *et als.*		Cross-bill.

THE FARMERS' LOAN & TRUST CO., Trustee, *vs.* THE GULF, COLORADO & SANTA FE R'Y CO. *et als.*	190	Original Bill.
THE GULF, COLORADO & SANTA FE R'Y CO. *vs.* THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN, *et als.*		Cross-bill.
THE FARMERS' LOAN & TRUST CO., Trustee, *vs.* THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *et als.*	187.	Original Bill.
THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *vs.* THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN, *et als.*		Cross-bill.

These causes came on this day to be heard on the motions of defendants John H. Reagan, L. L. Foster, William P. McLean, and Charles A. Culberson for leave to withdraw their answers to
379 the bills of complaint and cross-bills in the above-entitled causes and for leave to file demurrers to said bills and cross-bills. Whereupon and on consideration whereof, complainants and cross-complainants consenting to the granting of said leave, subject to terms as hereinafter set forth, and said defendants not objecting to said terms—

It is ordered, adjudged, and decreed that said defendants be, and they are hereby, allowed to withdraw their said answers to said bills and cross-bills in said causes and to file demurrers thereto upon the terms and conditions following, viz:

(1.) That said defendants do pay all costs of taking testimony and depositions in said causes, against them to be taxed, and it is hereby ordered that execution do issue therefor.

(2.) That said complainants and cross-complainants be, and they are hereby, allowed to amend their respective bills and cross-bills before said demurrers be filed, and in such manner as they may be advised.

March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

By consent of all parties in the above causes, it is hereby ordered that the exhibits marked "H" and "I" to the original bills and cross-bills shall be made a part of the records in these causes, the originals, without copying the same, to accompany the records as a part of the same to the Supreme Court of the United States.

March 23, 1893.

A. P. McCORMICK, *Cir. Judge.*

[Endorsed:] Copy of order granting leave to withdraw answers and file demurrer.

380 THE FARMERS' LOAN & TRUST CO. } = 190.
vs.
G., C. & S. F. R'Y CO., REAGAN, *et als.* }

Now comes complainant and sets down the above cause for hearing on bill and answer as to the defendant The Gulf, Colorado & Santa Fe Railway Company.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

[Endorsed:] Rule setting down cause for hearing on bill and answer.

381 In the United States Circuit Court for the Western District of Texas, at Austin. In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants. } No. 190.

The Demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to Complainant's Bill as Amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the bill of complaint and for causes of demurrer show:

That said complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of the said bill defendants say:

(1.) That it does not appear from the allegations of said bill that the complainant has any interest in the subject-matter of the complaint and in equity cannot demand the relief sought in the prayer of said bill, because the injury complained of is too
382 remote, and the bill shows no legal damage to complainant, because the relief asked by complainant in effect deprives the railway company of the management of its own affairs and substitutes the judgment of the court for that of the directory of the railway company.

(2.) Because it appeareth from the face of said bill that complainant has a plain and adequate remedy at law.

(3.) Because it appeareth from the face of the bill of the complaint that the suit is against the State of Texas and consequently obnoxious to the 11th amendment of the Constitution of the United States.

(4.) Because it appeareth from the face of the bill of complaint that complainant seeks to enjoin the judgment of a special tribunal of the State of Texas, said tribunal having jurisdiction under the constitution and laws of Texas to try and determine the special matters sought to be enjoined, and from which judgment a plain and adequate remedy by appeal had been granted to all parties interested by the laws of Texas.

(5.) Because it appears from the bill that complainant seeks to stay judicial proceedings when necessary to be brought under the laws and in the name of the State of Texas in the courts of Texas.

(6.) Because it appears upon the face of said bill that the complainant seeks to enjoin the attorney general of the State of Texas from bringing any action or enforcing penalties against the defendant railway company provided by law to enforce obedience
383 upon the part of the defendant company to the laws of the State of Texas.

(7.) Because it appears from the face of the bill that section 5 of the act of the State of Texas known as the railroad commission act and set forth in the bill, of which complainant complains as unconstitutional because depriving it of due process of law, is not obnoxious, as alleged, to the fourteenth amendment to the Constitution of the United States, but that the said section taken in connection with other sections of the said railroad commission act is a valid provision and constitutional.

(8.) Because it appears from the face of the bill that section 5 of the railroad commission act, if obnoxious to the Constitution of the United States, does not affect the law as a whole, and said commission law is valid and constitutional though section 5 be declared unconstitutional and void, and the relief prayed for by complainant to enjoin the railroad commission of the State of Texas from ever hereafter making any rates or issuing or delivering any further tariffs, orders, or circulars or the relief sought by complainant's bill, enjoining all persons hereafter from claiming any right under said law, cannot in equity be granted by this court.

(9.) Because it appears that the commission law, as set forth in complainant's bill and upon the invalidity of which the whole of the relief asked by complainant is based, is a valid and constitutional law and the court has no jurisdiction in this case, because, the law being constitutional, no Federal question is involved nor does it appear that said cause arises under the Constitution or any law of the United States.

384 (10.) Because it appears from the bill that the allegations of the unreasonableness of rates fixed by the State commission and of which it complains and seeks relief by injunction is

based upon the operating expenses, the interest on the bonded indebtedness, and the stock issue of the defendant railway, which complainant alleges the defendant railway should be permitted to earn; that said allegation setting up said claim as a basis of the reasonableness of the rate is insufficient in equity upon which to grant the relief prayed for.

(11.) That to so much of the allegation of complainant's bill as sets up the invalidity of circular 34 issued by the railroad commission of the State of Texas, which is made a part of said bill, defendants say the same is insufficient, in that it does not show that the requirements contained in said circular are unreasonable regulations imposed on defendant company, nor does it interfere with interstate commerce, as alleged.

(12.) That so much of the allegations in complainant's bill as seek to attack the validity of the law creating the railroad commission and prescribing its powers because of combining judicial, legislation, and executive powers *are* insufficient in law or equity upon which to base the relief prayed for.

(13.) That defendants, further demurring, say that this court has no jurisdiction, because it appears from the bill and the cross-bill and record generally that there is a fraudulent combination between complainant and the defendant railroad company to obtain jurisdiction in this court by creating a diversity of citizenship in order that the defendant company, which is a domestic corporation chartered under the laws of Texas, should be enabled to apply
385 for affirmative relief by means of the cross-bill filed by it against these defendants.

(14.) Defendants, further demurring, say that so much of said bill as sets up want of notice of the time and place of fixing rates by the railroad commission of Texas is insufficient in law or equity, because it appears by the bill that a notice was given before fixing rates, and that defendant railroad company did appear both by the traffic agent and counsel and discuss the rates prior to their being fixed by the commission. And, further demurring, defendants say that the want of notice complained of is under a law of the State of Texas, and no Federal question arises giving this court jurisdiction to determine its sufficiency.

(15.) Defendants, further demurring, say that so much of complainant's bill as sets up that the commission law of Texas is obnoxious to the 14th amendment, in not providing due process of law or depriving the defendant railroad of the equal protection of the law, is insufficient in this, that said objections are not shown by any allegations in said bill to appear upon the face of the law complained of by said complainant, and there exists any Federal question arising upon the face of said law by which this court can take jurisdiction.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, the defendants pray the judgment of the court whether they shall be compelled to make answer to

such parts of said bill as are herein specifically demurred to, and prays to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for said Defendants.

386 I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23rd day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *D'y*.

386½ [Endorsed:] No. 190. In the United States circuit court for the western district of Texas, at Austin. The Farmers' Loan and Trust Company, trustee, complainant, against The Gulf, Colorado and Santa Fe Railway Company, John H. Reagan, *et al.*, defendants. The demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson. Filed Mar. 23, 1893. B. G. Duval, clerk, by D. H. Hart, d'y.

387 In the United States Circuit Court for the Western District of Texas, at Austin. In Equity.

GULF, COLORADO & SANTA FE R'Y CO., Cross-complainant, }
vs.
THE FARMERS' LOAN & TRUST COMPANY, JOHN H. REAGAN, *et al.*, Defendants. }

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill of above-named cross-complainant as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill of said cross-complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross-bill and for causes of demurrer show:

That said cross-complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of said cross-bill defendants say:

(1). That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and said original bill falling said cross-bill must fall with it. The cross-bill cannot be maintained without the main bill to support it.

388 (2.) For further grounds of special demurrer to said cross-bill defendants adopt the special demurrers interposed by them in this cause to the original bill numbered from two to fifteen, inclusive.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the court whether they shall be compelled to make answer to such parts of said cross-bill as are herein specifically demurred to and pray to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23 day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

388½–395 [Endorsed:] No. 190. In the United States circuit court for the western district of Texas, at Austin. The Gulf, Colorado and Santa Fe Railway Company, cross-complainant, against The Farmers' Loan and Trust Company, Jno. H. Reagan, *et al.*, defendants. The demurrer of Jno. H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to cross-bill. Filed Mar. 23, 1893. B. G. Duvall, clerk, by D. H. Hart, d'y.

396 In the Circuit Court of the United States, Fifth Circuit, Western District of Texas. In Equity.

THE FARMERS' LOAN & TRUST CO., Trustee, Complainants, *vs.* THE GULF, COLORADO & SANTA FE R'Y CO. and JOHN H. REAGAN *et al.*, Defendants.	No. 190. Original Bill.
THE GULF, COLORADO & SANTA FE R'Y CO., Complainants, *vs.* THE FARMERS' LOAN & TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.	Cross-bill.

This cause having been set down for final hearing on the pleadings and evidence and being called for hearing thereon, the defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson presented their motion, on file herein, for leave to withdraw their answers and file demurrers, which motion was granted, conditioned upon the said defendants paying all costs of taking depositions and evidence herein against them to be taxed and for which execution may issue and on condition that the complainant and cross-complainant have leave to amend before the filing of the demurrers of the said defendants, which leave was granted, and whereupon said amendments were filed and the demurrers of the said defendants were filed to the original bill of complaint and cross-bill in this cause, as also to all amendments thereto, and were, by complainant and cross-complainant, set down for argument by consent, and were by all parties forthwith submitted; and thereupon, in consideration thereof, it was ordered, adjudged, and decreed that said demurrers be, and the same are hereby, overruled, and the defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson having entered of record their refusal to make further answer and the fact that they stood upon their demurrers and all parties submitting the cause for final decree, it is now, upon consideration thereof,

397 ordered, adjudged, and decreed that the bill of complaint, as amended, and the cross-bill of complaint, as amended in the above-entitled cause, be, and the same are hereby, sustained and taken for confessed; and the said cause coming on further to be heard upon the bill of complaint herein, as amended, and upon the answer of the defendant railway company thereto, confessing the same, it is further ordered, adjudged, and decreed as follows, to wit:

First. That the injunctions heretofore issued in this cause be, and the same are hereby, made perpetual; and accordingly—

Second. That defendant The Gulf, Colorado and Sante Fe Railway Company be, and it is hereby, perpetually enjoined, restrained, and prohibited from putting or continuing in effect the rates, tariffs, circulars, or orders of the railroad commission of Texas, or either or any of them, as described in the bill of complaint herein and in "Exhibit G" thereto and therewith filed, and from charging or

continuing to charge the rates specified in said tariffs, circulars, or orders or either or any of them.

Third. It is further ordered, adjudged, and decreed that the defendants The Railroad Commission of Texas and the defendants John H. Reagan, Wm. P. McLean, and L. L. Foster, acting as the railroad commission of Texas, and their successors in office, and the defendant Charles A. Culberson, acting as attorney general of the State of Texas, and his successors in office, be, and they are hereby, perpetually enjoined, restrained, and prohibited from instituting or authorizing or directing any suit or suits, action or actions, against the defendant railway company for the recovery of any penalties under and by virtue of the provisions of the act of the legislature of the State of Texas approved April 3rd, 1891,
398 and fully described in the bill of complaint, or under or by virtue of any of the said rates, tariffs, orders, or circulars of the said railroad commission of Texas, or any or either of them; or under or by virtue of the said act and the said rates, tariffs, orders, or circulars of said railroad commission, or any or either of them combined, and said defendants Reagan, McLean, and Foster, and The Railroad Commission of Texas, are further perpetually enjoined from certifying any copy or copies of any of said rates, orders, tariffs, or circulars, or from delivering or causing or permitting to be delivered certified copies of any of said orders, tariffs, or circulars to the said Culberson or any other party, and from furnishing the said Culberson or any other party any information of any character for the purpose of inducing, enabling, or aiding him or any other party to institute or prosecute any suit or suits against the said defendant railway company for the recovery of any penalty or penalties under the said act.

Fourth. It is further ordered, adjudged, and decreed that the said railroad commission of Texas and the said Reagan, McLean, and Foster be perpetually enjoined, restrained, and prohibited from making, issuing, or delivering to the said railway company or causing to be made, issued, or delivered to it any further rates, tariff or tariffs, circular or circulars, order or orders.

Fifth. It is further ordered, adjudged, and decreed that all other individuals, persons, or corporations be, and they are hereby, perpetually enjoined, restrained, and prohibited from instituting or prosecuting any suit or suits against the said railway company for the recovery of any damages, overcharges, penalty, or penalties under or by virtue of the said act or any of its provisions or under and by virtue of the said rates, tariffs, orders, or circulars of the said railroad commission of Texas or any or either of
399–427 them or under and by virtue of the said act and the said rates, tariffs, orders, and circulars or any or either of them combined.

Sixth. It is further ordered, adjudged, and decreed that all rates, tariffs, circulars, and orders heretofore made and issued by said commission, and fully described in "Exhibit G" to the bill of complaint herein, be, and they are hereby, declared to be unreasonable, unfair, and unjust as to complainant and cross-complainant, and they are hereby cancelled and declared to be null, void, and of no effect,

Seventh. It is further ordered, adjudged, and decreed that all costs herein be taxed against said defendants, Reagan, McLean, Culberson, and Foster and The Railroad Commission of Texas, and that execution may issue therefor.

A. P. McCORMICK, *Cir. Judge.*

Austin, Texas.
March 23rd, 1893.

[Endorsed:] No. 190. U. S. circuit court, western district of Texas, at Austin. The Farmers' Loan & Trust Co., trustee, *vs.* The Gulf, Colorado and Santa Fe Railway Co., John H. Reagan, & *als.* The Gulf, Colorado & Santa Fe Railway Company, cross-complainant, *vs.* The Farmers' Loan and Trust Company, John H. Reagan, & *als.*, defendants. Final decree. Filed & entered March 23, '93. B. G. Duval c'lk, by D. H. Hart, d'y.

428 In the Supreme Court of the United States.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,
against
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, Cross-complainant,
against
THE FARMERS' LOAN AND TRUST COMPANY, JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, and C. A. CULBERSON.

The appellants assign the following errors in this case:

1. The court erred in entertaining this suit and entering the decree because the same, as to the attorney general of Texas and the railroad commission, is in effect a suit against the State of Texas and inhibited by the XI amendment to the Constitution of the United States.

2. The court erred in rendering the decree against appellants because the act of the legislature of the State of Texas creating the railroad commission of Texas, approved April 3rd, 1891, is in all respects valid and constitutional.

3. The court erred in rendering the decree against appellants in so far as it inhibited the attorney general from instituting suits by authority of and in the name of the State of Texas to enforce said law and to recover the penalties therein provided for.

4. The court erred in rendering the decree against the appellants, The Railroad Commission, prohibiting said commission from hereafter adopting and promulgating any freight rates, because, if sections 5, 6, and 7 of the act approved April 3rd, 1891, or either of them are void, the remainder of the law is valid and constitutional.

5. The court erred in entertaining this suit and entering the decree against appellants because whether the rates fixed by the railroad commission of Texas are unreasonable is a legislative and not a judicial question and may not be inquired into except in the manner provided by said act approved April 3rd, 1891.

6. The court erred in entering the decree against appellants because the measure of a reasonable rate, as alleged in the complaint and cross-complaint, is not the legal measure or test thereof.

7. The court erred in rendering the decree against appellants because, as alleged in the complaint and cross-complaint, the rates fixed by the commission are just and reasonable.

C. A. CULBERSON,
HENRY C. COKE,
W. S. SIMPKINS,
Solicitors for Appellants.

(Endorsed:) = 190. The Farmers' Loan and Trust Company, trustee, *v.* The G. C. & S. F. R'y Co., John H. Reagan, *et al.* The G. C. & S. F. R'y Co., cross-complainant, *v.* The Farmers' Loan and Trust Company, John H. Reagan, *et als.* Assignment of errors. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

429 In the United States Circuit Court for the Western District of Texas, at Austin.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
vs.
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants. } No. 190.

Your petitioners, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, defendants in the above-entitled cause, would respectfully represent and show that in said cause pending in the United States circuit court in and for the western district of Texas, at Austin, there was entered on the 23rd day of March, 1893, in said court, a final decree to the prejudice and injury of your petitioners; which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the error complained of, petitioners pray that they may be allowed an appeal in said cause to the Supreme Court of the United States, and that the proper orders touching the security required of them, if any, may be made.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for Defendants.

The above application for appeal to the Supreme Court of the United States is on this day, to wit, March 2nd, 1894, allowed as prayed for upon defendants entering into bond, within the time and conditioned as the law requires, in the sum of $500.00, payable to complainant and cross-complainant. T. S. MAXEY, *Judge.*

Endorsed: No. 190. The Farmers' Loan and Trust Company, trustee, complainant, *v.* The Gulf, Colorado and Santa Fe Railway Company, John H. Reagan, *et al.*, defendants. Application for appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

430 Circuit Court of the United States of America for the Western District of Texas, in the 5th Circuit.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
vs.
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, *et al.*, Defendants.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, Cross-complainant,
vs.
THE FARMERS' LOAN AND TRUST COMPANY, Trustee; JOHN H. REAGAN, *et al.*, Defendants.

Know all men by these presents that we, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, of the city of Austin, Travis county, Texas, and H. G. Askew and E. D. True, are held and firmly bound unto the above-named Farmers' Loan and Trust Company and Gulf, Colorado and Santa Fe Railway Company in the sum of five hundred dollars ($500), to be paid to the said Farmers' Loan and Trust Company and Gulf, Colorado and Santa Fe Railway Company; for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 2nd day of March, in the year of our Lord eighteen hundred and ninety-four.

Whereas the above-named John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit on March 23, 1893, by the judge of the circuit court of the United States for the western district of Texas;

Now, therefore, the condition of this obligation is such that if the above-named John H. Reagan, W. P. McLean, and L. L. Foster and C. A. Culberson shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. REAGAN,
W. P. McLEAN,
L. L. FOSTER,
C. A. CULBERSON,
By C. A. CULBERSON, *Solicitor.*
H. G. ASKEW, *Surety.*
E. D. TRUE, *Surety.*

The foregoing bond is approved this the 2nd day of March, A. D. 1894.

T. S. MAXEY, *Judge.*

(Endorsed:) # 190. The Farmers' Loan and Trust Co., trustee, *v.* The G., C. and S. F. R'y Co., John H. Reagan, *et al.* The G., C. & S. F. R'y Co., cross complainant, *v.* The Mercantile Trust Co., John H. Reagan, *et al.* Bond on appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

431 In the Supreme Court of the United States.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,
against
THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, Cross-complainant,
against
THE FARMERS' LOAN & TRUST COMPANY, Trustee; JOHN H. REAGAN, W. P. MCLEAN, L. L. FOSTER, and C. A. CULBERSON.

In the above cause, in which an appeal to the Supreme Court of the United States has been allowed on behalf of the Gulf, Colorado and Santa Fe Railway Company, the issuance of citation is hereby waived this 2nd day of March, 1894.

J. W. TERRY,
Solicitor for the Gulf, Colorado & S. F. R'y Co.

(Endorsed:) = 190. The Farmers' Loan and Trust Company, trustee, *v.* The G., C. & S. F. R'y Co., John H. Reagan, *et al.* The G., C. & S. F. R'y Co., cross-complainant, *v.* The Farmers' Loan & Trust Co., John H. Reagan, *et al.* Acceptance of service. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

432 THE UNITED STATES OF AMERICA, }
The Western District of Texas. }

No. 190.

Citation.

By the Honorable T. S. Maxey, United States district judge for the western district of Texas, sitting as circuit judge.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,
v.
THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, JOHN H. REAGAN, L. L. FOSTER, W. P. MCLEAN, and C. A. CULBERSON.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, Cross-complainant,
v.
THE FARMERS' LOAN AND TRUST COMPANY, Trustee; JOHN H. REAGAN, L. L. FOSTER, W. P. MCLEAN, and C. A. CULBERSON.

In the name of Grover Cleveland, President of the United States.

To the Farmers' Loan and Trust Company, trustee, or its attorneys of record, Messrs. Farrar, Jonas & Kruttschnitt and West & McGown, Greeting:

Whereas John H. Reagan, L. L. Foster, W. P. McLean, and C. A. Culberson have lately appealed to the Supreme Court of the United

States from a decree lately rendered in the circuit court of the United States for the western district of Texas, made in favor of you, The Farmers' Loan and Trust Company, trustee, and of the Gulf, Colorado and Santa Fe Railway Company, and have filed the security required by law:

Therefore you are hereby cited and admonished to appear before the said Supreme Court, at the city of Washington, on the second day of April next, to do and receive what may appertain to justice to be done in the premises.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States.

Given under my hand, at the city of Austin, in the western district of Texas, in the fifth circuit of the United States, this the 12th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.]

Signed March 14, 1894.

T. S. MAXEY, *Judge.*
D. H. HART, *Clerk.*

Service of above accepted, and we acknowledge service of copy of same on us March 17, 1894.

FARMERS' LOAN & TRUST CO., *Trustee,*
By ERNEST B. KRUTTSCHNITT,
Its Attorney of Record.

(Endorsed:) No. 190. Farmers' Loan & Trust Co., trustee, *v.* The G., C. & S. F. R'y Co., John H. Reagan, *et al.* The G., C. & S. F. R'y Co., cross-complainant, *v.* Farmers' Loan & Trust Co., trustee, & Jno. H. Reagan *et al.* Citation. Filed Mar. 21, 1894. D. H. Hart, clerk, by O. H. Millican, d'y. Original.

433 THE UNITED STATES OF AMERICA, }
Western District of Texas. }

I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the above and foregoing is a true and correct copy of the proceedings had in said court in cause No. 190, on the equity side of the docket, wherein The Farmers' Loan and Trust Company, trustee, is complainant and The Gulf, Colorado & Santa Fe Railway Company, John H. Reagan, William P. McLean, L. L. Foster, and Charles A. Culberson are defendants and The Gulf, Colorado & Santa Fe Railway Company is cross-complainant and The Farmers' Loan and Trust Company, The Railroad Commission of Texas, John H. Reagan, William P. McLean, L. L. Foster, and Charles A. Culberson are defendants, as the same appears from the files and records of said court now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, at the city of Austin, in said district, on this the 21st day of March, A. D. 1894.

The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.

D. H. HART, *Clerk.*

434 In the Supreme Court of the U. S.

JOHN H. REAGAN *et al.*
vs.
FARMERS' LOAN & TRUST CO. *et al.* } No. 1170.

It is hereby stipulated that the following portions of the record only shall be printed:

1. Caption.
2. Original bill, omitting exhibits.
3. Answer of the railroad Co.
4. Amendment to original bill, filed April 30th, 1892.
5. Cross-bill.
6. Amendment — original bill, filed March 23d, 1893.
7. Amendment to cross-bill, filed March 23d, 1893.
8. Demurrers to original and cross bill.
9. Final decree.
10. Assignment of errors.
11. Application for appeal and order thereon.
12. Appeal bond.
13. Waiver of appeal (G., C. & S. F. R'y Co.)

435 14. Citation to Farmers' Loan & Trust Co. and return.

15. The following pages each in Exhibits H & I, to wit: 1, 22, 23, 28, 29, 30, 31, 34, 35, 42, 43, 44, 45, 48, 49, 50, 51, 58, 59, 62, 63, 70, 71.

16. Certificate of clerk.
17. Motion to withdraw answer of appellants and to demur.
18. Rules setting down demurrers to original and cross bills for argument.
19. Rule on defendants declining to further answer.

C. A. CULBERSON,
For Appellants.
E. B. KRUTTSCHNITT,
For the Trustee Co., Appellee.
J. W. TERRY,
For the Railway Co., Appellee.

[Endorsed:] No. 1170. Stipulation as to printing record.

436 [Endorsed:] Case No. 15,554. Supreme Court U. S., October term, 1893. Term. No. 1170. John H. Reagan *et al.*, appts. *vs.* The Farmers' Loan & Trust Co. & The Gulf, Colorado & Santa Fe R'y Co. Stipulation to omit parts of record in printing. Filed April 5, 1894.

437 No. 190. Exhibit H to Bill of Complaint and Cross-Bill.

ANNUAL REPORT OF THE GULF, COLORADO & SANTA FE RAILWAY COMPANY TO THE RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1891. FILED MARCH 23, 1893. B. G. DUVAL, CL'K, BY D. H. HART

437 (22) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies." "Stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rentals Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

437 (23)

Recapitulation of Funded Debt.

Class of debt.	Amount issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds—page 19	21,160,000 00	21,160,000 00	1,326,560 00	
Miscellaneous obligations—page 21				
Income bonds—page 19				
Total	21,160,000 00	21,160,000 00	1,326,560 00	

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal.		Interest.		Rate.
			Amount paid during year.	Amount funded or otherwise disposed of.	Amount accrued during year.	Amount matured during year.	
None							
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1891.	
Cash	174,103 76	Receiver's certificates	
Bills receivable	160,550 00	Loans and bills payable	
Due from agents	68,312 51	Audited vouchers and accounts	580,869 42
Net traffic balances due from other companies		Wages and salaries	337,226 24
Due from solvent companies and individuals	250,984 46	Net traffic balances due to other companies	105,874 72
other cash assets (excluding "materials and supplies") *		Dividends not called for	
		Matured interest coupons unpaid (including coupons due July 1)	2,309,260 00
		Rentals due July 1	
		Miscellaneous	
Balance—current liabilities	2,680,195 76	Balance—cash assets	
Total	$3,333,230 38	Total	$3,333,230 38

* Materials and supplies on hand, $165,622 18. (See general balance-sheet—page 4a.)

437 (28) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 28," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1890," there should be entered the amounts returned as "total cost to June 30, 1889," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

437 (29) *Cost of Road, Equipment, and Permanent Improvements.*

Item.	Expenditures during year.			Total cost to June 30, 1890.	Total cost to June 30, 1891	Cost per mile.
	Included in operating expenses.	Not included in operating expenses.				
		Charged to investment as permanent improvements.	Charged to construction or equipment.			
Construction:						
Right of way			8,886 20	413,412 33	422,298 53	
Other real estate				240,526 61	240,526 61	
Fences			4,681 91	241,877 73	246,559 64	
Grading and bridge and culvert masonry			263,459 36	3,437,188 25	3,700,647 61	
Bridges and trestles			18,880 94	2,248,735 04	2,267,616 80	
Rails			257,078 62	5,228,178 64	5,485,257 26	
Ties			140,668 25	1,799,097 74	1,939,765 99	
Other superstructure			370,884 65	1,707,229 27	2,087,113 92	
Buildings, furniture and fixtures			32,843 12	1,046,064 00	1,078,907 12	
Shop machinery and tools			3,150 36	94,555 47	97,705 83	
Engineering expenses			18,802 81	430,933 34	449,736 15	
Interest during construction						
Discount on securities sold for construction				2,015,770 42	2,015,770 42	
Telegraph line			38 16	121,562 65	121,600 71	
Wharfing, etc						
Sidings and yard extensions			166,061 95	36,148 12	202,210 07	
Terminal facilities and elevators						
Road built by contract						
Purchase of constructed road				2,400,911 30	2,400,911 30	
Other items			240 00	317,034 49	317,274 49	
Total construction			1,326,906 21	21,908,225 30	23,235,801 51	21,760 29
Equipment:						
Locomotives				690,532 22	690,532 22	
Passenger cars				181,351 92	181,351 92	
Sleeping, parlor and dining cars						
Baggage, express and postal cars				77,097 37	77,097 37	
Combination cars				9,369 35	9,369 35	
Freight cars			32,468 59	1,055,503 63	1,087,972 22	
Other cars of all classes			3,641 15	69,785 21	73,426 36	
Floating equipment						
Total equipment			36,109 74	2,084,579 70	2,120,689 44	2,004 43
Grand total, cost construction, equipment, etc			1,331,775 95	24,022,805 00	25,354,580 95	23,964 63
Total cost construction, equipment, etc., State of Texas			1,305,393 27			

437 (30) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 30," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified under any of the captions under "deductions from income."

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1890, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks.

437 (31) *Income Account.*

(For roads making operating reports.)

Gross earnings from operation—page 35	$4,785,381 52	
Less operating expenses—page 45	4,077,786 66	
Income from operation		$707,594 86
Dividends on stocks owned—page 37		
Interest on bonds owned—page 39		
Miscellaneous income, less expenses—page 41		
Income from other sources		
Total income		$707,594 86
Deductions from income:		
Interest on funded debt accrued—page 23	1,396,560 00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	9,459 21	
Rents—page 47, A		
Taxes	99,322 46	
Permanent improvements—page 29		
Other deductions		
Total deductions from income		1,505,341 67
Net deficit		$797,746 81
Dividends, — per cent., common stock		
Dividends, — per cent., preferred stock		
Other payments from net income		
Total		
Deficit from operations of year ending June 30, 1891		$797,746 81
Deficit on June 30, 1890 (from "general balance-sheet," 1890 report)		3,120,056 07
Additions for year		
Deductions for year		
Deficit on June 30, 1891 (for entry on "general balance-sheet," page 49)		$3,917,802 88

437 (34) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 34," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This statement should show the actual amount of earnings from the operation of the road, during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

437 (35) *Earnings from Operation—State of Texas.*

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	943,420 80		
Less repayments:			
Tickets redeemed	1,733 49		
Excess fares refunded	868 97		
Other repayments			
Total deductions		$2,602 46	
Total passenger revenue			$940,818 34
Mail			86,430 97
Express			98,192 06
Extra baggage and storage, included in pass. revenue			
Other items			
Total passenger earnings			$1,125,441 37
Freight:			
Freight revenue	3,680,213 61		
Less repayments:			
Overcharge to shippers	101,956 95		
Other repayments			
Total deductions		$101,956 95	
Total freight revenue			$3,578,256 66
Stock yards			
Elevators			
Other items			
Total freight earnings			$3,578,256 66
Total passenger and freight earnings			$4,703,698 03
Other earnings from operation:			
Car mileage—balance			
Switching charges—balance			
Telegraph companies			12,207 71
Rents from tracks, yards, and terminals—page 41			
Rents not otherwise provided for			5,986 26
Other sources			63,489 52
Total other earnings			$81,683 49
Total gross earnings from operation—Texas			
Total gross earnings from operation—entire line			$4,785,381 52

437 (42) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 42," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

437 (43) *Operating Expenses.*

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	113,065 37	306,327 98	420,323 35
2. Renewals of rails	1,697 01	4,279 71	5,977 02
3. Renewals of ties	35,655 80	95,359 72	131,015 52
4. Repairs of bridges and culverts	30,724 00	80,293 36	111,017 36
5. Repairs of fences, road crossings, signs, and cattle-guards	3,867 77	10,234 80	14,102 57
6. Repairs of buildings	9,372 45	24,326 04	33,698 49
7. Repairs of docks and wharves	1,025 15	2,775 52	3,800 67
8. Repairs of telegraph	21,909 77	57,611 26	79,481 13
Total	$218,408 32	$581,208 49	$799,616 71
Maintenance of equipment:			
10. Repairs and renewals of locomotives	42,312 80	226,188 88	268,501 68
11. Repairs and renewals of passenger cars	55,875 31		55,875 31
12. Repairs and renewals of freight cars		174,927 64	174,927 64
13. Repairs and renewals of ferry-boats, tugs, floats, and barges	2,708 80	7,737 51	10,446 37
14. Shop machinery, tools, etc	4,178 54	11,240 51	15,419 04
15. Other expenses			
Total	$105,135 50	$420,094 54	$525,229 04
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	102,206 74	328,110 32	430,317 06
17. Fuel for locomotives	127,514 81	364,084 69	491,599 50
18. Water supply for locomotives	11,000 00	35,581 00	46,581 00
19. All other supplies for locomotives	7,302 65	22,767 42	30,070 07
20. Wages of other trainmen	58,184 08	250,340 73	308,524 81
21. All other train supplies	20,312 41	17,631 69	46,944 10
22. Wages of switchmen, flagmen, and watchmen	22,578 10	124,613 50	147,191 60
23. Expense of telegraph, including train-dispatchers and operators	23,586 56	62,561 03	86,147 64
24. Wages of station agents, clerks, and laborers	53,024 84	272,840 15	325,864 99
25. Station supplies	2,987 40	15,624 38	18,611 78
26. Switching charges—balance			
27. Car mileage—balance	37,820 22	262,181 52	300,001 74
28. Loss and damage	24,050 05	88,162 40	112,212 43
29. Injuries to persons	10,509 13	15,558 51	26,068 64
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies	28,371 91	63,078 04	91,449 95
31. Other expenses			
Total	$549,230 50	$1,870,280 46	$2,700,580 96

437 (44) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 44," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 42.

Explanatory Remarks.

437 (45) *Operating Expenses*—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	4,030 46	10,479 93	14,510 39
33. Salaries of clerks	12,231 13	41,529 18	53,760 31
34. General office expenses and supplies	1,122 88	2,907 59	4,030 47
35. Agencies, including salaries and rent	10,360 68	20,790 23	31,150 91
36. Advertising	4,291 49	993 99	5,285 48
37. Commissions			
38. Insurance	7,088 11	18,878 16	25,966 27
39. Expense of fast-freight lines			
40. Expense of traffic associations	119 87	1,141 73	1,261 60
41. Expense of stock yards and elevators		7,558 99	7,558 99
42. Rents for tracks, yards, and terminals—page 47 B	6,633 10	22,457 86	29,090 96
43. Rents not otherwise provided for	3,574 41	4,198 78	7,773 19
44. Legal expenses	12,023 32	30,111 31	42,134 63
45. Stationery and printing	6,208 40	18,568 35	24,836 75
46. Other general expenses			
Total	$87,763 85	$179,605 10	$247,368 95
Recapitulation of expenses.			
47. Maintenance of way and structures	218,418 22	581,218 49	799,616 71
48. Maintenance of equipment	105,135 50	420,084 54	525,220 04
49. Conducting transportation	543,290 50	1,956,290 46	2,500,580 96
50. General expenses	87,763 85	179,605 10	247,368 95
Grand total	$940,608 07	$3,137,188 59	$4,077,796 66
Percentage of expenses to earnings—entire line			85.21 %
Operating expenses—State of Texas:			
Maintenance of way and structures			
Maintenance of equipment		Cannot show this separately.	
Conducting transportation			
General expenses			
Total			
Percentage of expenses to earnings—Texas			

437 (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1890, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1891, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease" in the account specified.

In case there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

437 (49) *Comparative General Balance-sheet.*

June 30, 1890.		Assets.	June 30, 1891.		Year ending June 30, 1891.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
21,078,225 30		Cost of road—page 29	23,233,891 52		1,265,666 22	
2,084,174 70		Cost of equipment—page 29	2,120,080 44		36,199 74	
240 00		Stocks of other companies owned—page 37	25,240 00		24,000 00	
11,046 85		Bonds of other companies owned—page 38	11,046 85			
		Other permanent investments				
97,448 71		Galveston wharf property	97,448 71			
283,240 01		Lands owned	205,347 50			37,892 51
13,340 91		Side tracks & buildings in process of construction				13,340 91
		Sundry accounts in process of adjustment	122,746 81		122,746 81	
		Cash and current assets—page 23				
163,226 93		Other assets	365,629 18		172,397 25	
		Materials and supplies				
		Sinking fund				
		Sundries				
3,120,050 07		Profit and loss	3,917,802 88		797,746 81	
$27,741,425 48		Grand total	$30,149,603 88		$2,408,175 40	

437 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

437 (51) *Comparative General Balance-sheet.*

June 30, 1890.		Liabilities.	June 30, 1891.		Year ending June 30, 1891.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
4,560,000 00		Capital stock—page 17	4,560,000 00			
21,160,000 00		Funded debt—page 23	21,160,000 00			
252,145 18		Current liabilities—page 23	2,080,195 59		1,828,049 41	
126,960 00		Accrued interest on funded debt not yet payable	126,960 00			
39,483 85		Accrued taxes not yet due	42,566 16		3,082 31	
80,255 41		Sundry accounts in process of adjustment				80,255 41
924,783 04		A., T. and S. F. R. R. Co. advances	1,579,882 13		657,269 09	
		Profit and loss				
$27,741,428 48		Grand total	$30,149,603 88		$2,408,175 40	

437 (58) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1891; the "total number of days worked," and the "total yearly compensation," should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

437 (59) *Employees and Salaries—State of Texas.*

Class.	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	20	7,300	60,210 00	8 24
General office clerks	263	65,928	149,918 95	2 27
Station agents	150	43,800	96,486 78	2 20
Other stationmen	812	199,951	417,267 03	2 09
Enginemen	230	69,112	241,831 33	3 50
Firemen	206	58,552	123,804 41	2 14
Conductors	152	36,863	138,700 07	3 76
Other trainmen	374	85,101	198,481 82	2 33
Machinists	140	55,304	142,629 00	2 58
Carpenters	73	21,012	53,729 46	2 56
Other shopmen	865	235,706	457,825 16	1 80
Section foremen	350	94,750	99,210 00	1 81
Other trackmen	2,568	526,948	749,439 54	1 41
Switchmen, flagmen, and watchmen	144	41,772	98,571 00	2 30
Telegraph operators and dispatchers	93	33,304	82,807 30	2 48
Employees—account floating equipment	58	5,124	12,470 98	2 43
Total (including "general officers")	6,256	1,540,747	3,105,117 84	2 01
Less "general officers"	20	7,300	60,210 00	8 24
Total (excluding "general officers")	6,236	1,533,447	3,044,907 84	1 98
Distribution of above:				
General administration	263	73,228	210,328 95	2 80
Maintenance of way and structures	2,770	580,422	861,350 52	1 54
Maintenance of equipment	1,137	312,652	654,174 02	2 06
Conducting transportation	2,120	571,645	1,379,663 74	2 45
Total (including "general officers")	6,256	1,540,747	3,105,117 83	2 01
Less "general officers"	20	7,300	60,210 00	8 24
Total (excluding "general officers")	6,236	1,533,447	3,044,907 83	1 98
Total (including "general officers")—entire line	6,256	1,540,747	3,105,117 83	2 01

437 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 60, observing that references to "page 35" in the second paragraph do not apply to filling out page 63, unless data returned on page 35 of the Annual Report to the Interstate Commerce Commission is used.

Explanatory Remarks.

The milage of switching trains is computed on basis of allowing 75 miles per day of twelve hours or less to each train and 10 miles per hour for all overtime.

437 (63) *Passenger and Freight and Train Mileage—Entire Line.*

Item	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars	¢	Mills
Passenger traffic:				
Number of passengers carried earning revenue	685,360			
Number of passengers carried one mile	38,253,018			
Average distance carried	55.84			
Total passenger revenue		940,818	34	
Average amount received from each passenger		1	37	267
Average receipts per passenger per mile			02	458
Estimated cost of carrying each passenger one mile			02	407
Total passenger earnings		1,125,441	57	
Passenger earnings per mile of road		1,063	74	
Passenger earnings per train mile		1	06	764
Freight traffic:				
Number of tons carried of freight earning revenue	3,134,278			
Number of tons carried one mile	236,800,241			
Average distance haul of one ton	216.08			
Total freight revenue		3,578,856	66	
Average amount received for each ton of freight		3	18	272
Average receipts per ton per mile			01	511
Estimated cost of carrying one ton one mile			01	324
Total freight earnings		3,578,856	66	
Freight earnings per mile of road		3,382	09	
Freight earnings per train mile		1	26	120
Passenger and freight:				
Passenger and freight revenue		4,519,675	00	
Passenger and freight revenue per mile of road		4,271	34	
Passenger and freight earnings		4,703,908	03	
Passenger and freight earnings per mile of road		4,445	83	
Gross earnings from operation		4,785,081	52	
Gross earnings from operation per mile of road		4,523	04	
Expenses		4,077,586	66	
Expenses per mile of road		3,854	24	
Train mileage:				
Miles run by passenger trains	1,027,365			
Miles run by freight trains	2,700,448			
Miles run by mixed trains	15,5,965			
Total mileage trains earning revenue	3,899,978			
Miles run by switching trains	606,329			
Miles run by construction and other trains	208,217			
Grand total train mileage	4,794,484			
Mileage of loaded freight cars—north or east	12,206,761			
Mileage of loaded freight cars—south or west	18,768,843			
Mileage of empty freight cars—north or east	11,957,195			
Mileage of empty freight cars—south or west	4,772,034			
Average number of freight cars in train	16.87			
Average number of loaded cars in train	11.29			
Average number of empty cars in train	5.58			
Average number of tons of freight in train	81.61			
Average number of tons of freight in each loaded car	7.01			

437 (70) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 70," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

Renewals of Rails and Ties—State of Texas.

New rails laid during year.

Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.
Iron	None		
Total iron			
Steel	9,389.75	61 lbs.	$30.92½
Total steel	9,389.75	61 lbs.	$30.92½

New ties laid during year.

Kind.	Number.	Average price at distributing point.
		Cents.
Oak	204,860	
Pine	257,189	43.34
Cedar	97,265	
Cypress	85,727	
Total	585,341	43.34

Consumption of Fuel by Locomotives—State of Texas.

Locomotives.	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
					1½ cords=1 ton		
Passenger		32,960.71	431.56		36,188.41	1,088,190	66.51
Freight		117,460.54	1,227.75		118,288.04	3,029,319	78.10
Switching		24,213.50	241.75		24,375.07	699,469	69.70
Construction		5,520.25	99.69		7,586.71	332,602	45.62
Total		180,105.00	2,000.75		186,438.83	5,149,580	72.41
Average cost at distributing point		3.01	1.88		3.01		

438 190. EXHIBIT I to BILL OF COMPLAINT AND CROSS-BILL.

ANNUAL REPORT OF THE GULF, COLORADO AND SANTA FE R'Y TO THE RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1892. FILED MARCH 23, 1893. B. G. DUVAL, CLERK, BY D. H. HART, D'Y.

438 (22) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies," "stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rentals Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

438 (23)

Recapitulation of Funded Debt.

Class of debt.	Amount issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds—page 14	21,160,000 00	21,160,000 00	1,396,560 00	None.
Miscellaneous obligations—page 21				
Income bonds—page 18				
Total	21,160,000 00	21,160,000 00	1,396,560 00	

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal.		Interest.		Rate.
			Amount paid during year.	Amount funded or otherwise disposed of.	Amount accrued during year.	Amount paid during year.	
None.							
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1891.	
Cash	105,442 80	Receiver's certificates	
Bills receivable	108,400 00	Loans and bills payable	334,187 53
Due from agents	61,274 39	Audited vouchers and accounts	326,508 62
Net traffic balances due from other companies		Wages and salaries	282,573 99
Due from solvent companies and individuals	377,159 68	Net traffic balances due to other companies	40,456 11
Other cash assets (excluding "materials and supplies")*		Dividends not called for	
		Matured interest coupons unpaid (including coupons due July 1)	3,706,680 00
		Rentals due July 1	
		Miscellaneous	
Balance—current liabilities	3,038,861 42	Balance—cash assets	
Total	4,652,399 25	Total	4,652,399 25

*Materials and supplies on hand, $212,778 47.

(See general balance-sheet—page 43.)

438 (28) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 28," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1890," there should be entered the amounts returned as "total cost to June 30, 1889," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

Item.	Expenditures during year. Included in operating expenses.	Not included in operating expenses. Charged to income account on permanent improvements.	Not included in operating expenses. Charged to cost of structures or equipment.	Total cost to June 30, 1891.	Total cost to June 30, 1891.	Cost per mile.
Construction:						
Right of way			9,919 95	422,798 53	432,248 48	408 55
Other real estate			10,885 91	239,526 61	260,412 54	246 14
Fences			5,751 30	246,559 64	252,310 94	238 48
Grading and bridge and culvert masonry			86,154 64	3,760,647 61	3,846,802 25	3,637 57
Bridges and trestles			58,233 87	2,267,619 80	2,325,660 53	2,198 44
Ballast			60,660 79	5,486,117 26	5,546,778 05	5,241 19
Ties			22,588 4	1,949,765 99	1,972,054 43	1,864 95
Other superstructure			199,107 04	2,087,113 92	2,286,220 96	2,160 89
Buildings, furniture and fixtures			6,912 37	1,078,927 12	1,085,840 49	1,026 32
Shop machinery and tools			17,681 06	97,705 83	115,398 89	109 28
Engineering expenses			10,433 18	449,796 15	460,229 33	435 09
Interest during construction						
Discount on securities sold for construction				2,015,770 42	2,015,770 42	1,905 26
Telegraph line			2,088 31	121,599 73	123,688 04	116 90
Wharfing, etc						
Sidings and yard extensions			97,098 92	202,210 07	299,308 99	283 47
Terminal facilities and elevators						
Road built by contract						
Purchase of constructed road				2,490,911 30	2,490,911 30	2,354 36
Other items				317,274 49	317,274 49	299 88
Total construction			527,097 63	23,231,891 51	23,810,989 14	22,505 66
Equipment:						
Locomotives			842 00	690,232 22	691,774 22	653 85
Passenger cars			2,109 35	181,351 92	183,458 27	173 40
Sleeping, parlor and dining cars						
Baggage, express and postal cars				77,067 37	77,067 37	72 87
Combination cars				9,909 35	9,909 35	9 37
Freight cars			4,146 86	1,087,572 22	1,092,573 08	1,032 49
Other cars of all classes			190 00	73,426 36	74,080 36	70 02
Floating equipment						
Total equipment			8,089 21	2,120,680 44	2,128,698 65	2,012 00
Grand total cost construction, equipment, etc			535,186 84	25,354,580 95	25,939,687 79	24,517 66
Total cost construction, equipment, etc., State of Texas						

438 (30) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 30," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified under any of the captions under "deductions from income."

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1890, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks.

438 (31) *Income Account.*

(For roads making operating reports.)

Gross earnings from operation—page 35	5,060,538 38	
Less operating expenses—page 45	4,775,282 56	
Income from operation		285,255 82
Deficit		
Dividends on stocks owned—page 37		
Interest on bonds owned—page 39		
Miscellaneous income, less expenses—page 41		
Income from other sources		
Total income		285,255 82
Deficit		
Deductions from income:		
Interest on funded debt accrued—page 23	1,396,560 00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	9,765 61	
Rents—page 47, A		
Taxes	91,452 90	
Permanent improvements—page 29		
Other deductions		
Total deductions from income		1,497,778 51
Net income		
Deficit		1,212,522 69
Dividends, —per cent., common stock	None.	
Dividends, —per cent., preferred stock		
Other payments from net income		
Total		
Surplus from operations of year ending June 30, 1891		
Deficit from operations of year ending June 30, 1891		1,212,522 69
Surplus on June 30, 1890 (from "general balance-sheet," 1890 report)		
Deficit on June 30, 1890 (from "general balance-sheet," 1890 report)		3,917,302 88
Additions for year		
Deductions for year		
Surplus on June 30, 1891 (for entry on "general balance sheet," page 51)		
Deficit on June 30, 1891 (for entry on "general balance-sheet," page 49)		5,130,325 57

438 (34) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 34," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

438 (35) *Earnings from Operation—State of Texas.*

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	920,713 08		
Less repayments:			
Tickets redeemed	[1]	4,847 24	
Excess fares refunded	[1]		
Other repayments			
Total deductions		4,847 24	
Total passenger revenue			915,865 84
Mail			80,869 65
Express			99,656 07
Extra baggage and storage			9,928 13
Other items			
Total passenger earnings			1,112,319 69
Freight:			
Freight revenue	4,063,350 29		
Less repayments:			
Overcharge to shippers		153,395 98	
Other repayments			
Total deductions		153,395 98	
Total freight revenue			3,909,954 31
Stock yards			8,712 35
Elevators			
Other items			
Total freight earnings			3,918,666 66
Total passenger and freight earnings			5,030,986 35
Other earnings from operation:			
Car mileage—balance			
Switching charges—balance			12,936 29
Telegraph companies			
Rents from tracks, yards, and terminals—page 41			2,719 73
Rents not otherwise provided for			13,896 01
Other sources			
Total other earnings			29,552 03
Total gross earnings from operation—Texas			
Total gross earnings from operation—entire line			5,060,538 38

438 (42) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 42," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

438 (43) *Operating Expenses.*

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	108,239 18	299,141 60	407,380 78
2. Renewals of rails	4,208 93	13,782 63	17,991 56
3. Renewals of ties	59,300 28	164,692 22	223,992 50
4. Repairs of bridges and culverts	22,829 37	60,852 34	83,681 71
5. Repairs of fences, road crossings, signs, and cattle-guards	5,040 45	14,134 26	19,174 71
6. Repairs of buildings	14,871 91	37,413 23	52,285 14
7. Repairs of docks and wharves			
8. Repairs of telegraph	1,471 06	4,143 79	5,614 85
9. Other expenses	18,983 31	52,185 92	71,169 23
Total	234,941 49	646,255 99	881,200 48
Maintenance of equipment:			
10. Repairs and renewals of locomotives	71,532 20	238,365 79	309,897 99
11. Repairs and renewals of passenger cars	91,500 20		91,500 20
12. Repairs and renewals of freight cars		244,785 69	244,785 69
13. Repairs and renewals of ferry-boats, tugs, floats, and barges			
14. Shop machinery, tools, etc	3,450 37	9,561 02	13,011 39
15. Other expenses	4,352 61	11,939 33	16,291 94
Total	170,835 38	504,651 83	735,487 21
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	110,622 73	334,659 66	444,282 39
17. Fuel for locomotives	167,936 03	482,773 86	650,209 89
18. Water supply for locomotives	14,564 54	40,077 82	54,642 36
19. All other supplies for locomotives	7,347 76	22,652 35	29,800 14
20. Wages of other trainmen	58,453 77	251,360 27	309,814 04
21. All other train supplies	8,859 16	13,045 69	21,905 85
22. Wages of switchmen, flagmen, and watchmen	6,746 49	147,952 75	154,749 24
23. Expense of telegraph, including train-dispatchers and operators	22,572 52	63,305 91	85,878 43
24. Wages of station agents, clerks, and laborers	48,960 04	298,373 68	346,333 72
25. Station supplies	3,092 20	27,387 27	30,479 47
26. Switching charges—balance		999 35	999 35
27. Car mileage—balance	42,826 16	293,637 64	336,463 79
28. Loss and damage	27,097 84	151,340 67	178,437 51
29. Injuries to persons	33,375 72	30,052 17	63,427 89
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies			
31. Other expenses	34,021 65	89,134 74	123,156 39
Total	595,016 34	2,297,162 83	2,842,179 17

438 (44) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 44," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 42.

Explanatory Remarks.

438 (45) *Operating Expenses*—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	4,698 68	10,504 31	15,212 99
33. Salaries of clerks	13,415 43	47,922 54	61,337 97
34. General office expenses and supplies	947 31	2,679 63	3,626 94
35. Agencies, including salaries and rent	13,678 79	24,347 60	38,026 39
36. Advertising	4,791 79	555 55	5,347 34
37. Commissions	8,727 09	45,667 16	54,394 25
38. Insurance			
39. Expense of fast freight lines		10,311 28	10,311 28
40. Expense of traffic associations			
41. Expense of stock yards and elevators	7,898 65	21,952 65	29,851 30
42. Rents for tracks, yards, and terminals—page 47 B	4,420 09	4,371 12	8,791 21
43. Rents not otherwise provided for	13,956 49	37,051 51	51,008 00
44. Legal expenses	9,249 20	29,458 53	38,707 73
45. Stationery and printing			
46. Other general expenses			
Total	81,463 52	234,951 88	316,415 40
Recapitulation of expenses:			
47. Maintenance of way and structures	234,944 49	646,255 99	881,200 48
48. Maintenance of equipment	170,835 38	564,651 83	735,487 21
49. Conducting transportation	605,016 54	2,237,162 93	2,842,179 47
50. General expenses	81,463 52	234,951 88	316,415 40
Grand total	1,092,259 93	3,683,022 63	4,775,282 56
Percentage of expenses to earnings—entire line	98.39	93.98	94.35
Operating expenses—State of Texas:			
Maintenance of way and structures			
Maintenance of equipment			
Conducting transportation			
General expenses			
Total			
Percentage of expenses to earnings—Texas			

438 (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1890, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1891, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease," in the account specified.

In case there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

438 (49) *Comparative General Balance-sheet.*

June 30, 1890.		Assets.	June 30, 1891.		Year ending June 30, 1891.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
23,223,891 51		Cost of road—page 29		23,810,989 14	587,097 63	
2,120,089 44		Cost of equipment—page 29		2,128,698 65	8,609 21	
25,000 00		Stocks of other companies owned—page 37		25,000 00		
11,046 85		Bonds of other companies owned—page 39		11,046 85		
		Other permanent investments				
97,446 71		Galveston wharf property		97,446 71		
255,347 50		Lands owned		231,684 73		23,662 77
120,746 81		Sundry accounts in process of adjustment		189,543 72	57,706 91	
653,034 73		Cash and current assets—page 23		713,537 83	60,503 04	
		Other assets				
305,629 18		Materials and supplies		252,778 47		132,850 71
		Sinking fund				
		Sundries				
3,917,802 88		Profit and loss		5,130,325 77		
30,802,658 67		Grand total		32,562,024 67	1,759,380 00	

438 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

438 (51) *Comparative General Balance-sheet.*

June 30, 1890.		Liabilities.	June 30, 1891.		Year ending June 30, 1891.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
	4,560,000 00	Capital stock—page 17		4,560,000 00		
	21,160,000 00	Funded debt—page 23		21,160,000 00		
	3,333,230 38	Current liabilities—page 23		4,652,399 25	1,319,168 87	
	120,960 00	Accrued interest on funded debt not yet payable		120,960 00		
	42,566 16	Accrued taxes not yet due		37,352 09		5,214 07
	1,177,882 15	A., T. and S. Fe R. R. Co. ac. advances		2,025,313 33	445,431 20	
		Profit and loss				
	30,802,638 67	Grand total		32,562,024 67	1,759,386 00	

438 (58) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1891; the "total number of days worked," and the "total yearly compensation," should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

Class	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	21	7,594	61,042 00	8 03
General office clerks	185	64,607	159,301 27	2 46
Station agents	120	44,920	96,071 38	2 18
Other stationmen	552	124,863	239,114 64	1 91
Enginemen	277	66,812	237,390 75	3 55
Firemen	220	53,358	119,140 77	2 23
Conductors	151	35,863	137,740 13	3 56
Other trainmen	366	84,025	198,587 21	2 36
Machinists	181	54,329	130,658 14	2 40
Carpenters	98	28,040	70,865 45	2 45
Other shopmen	832	244,178	447,646 04	1 83
Section foremen	152	55,632	93,570 00	1 68
Other trackmen	1,688	340,910	445,209 96	1 39
Switchmen, flagmen, and watchmen	178	56,998	135,929 83	2 39
Telegraph operators and dispatchers	102	49,236	73,457 20	1 49
Employees—account floating equipment				
All other employees and laborers	326	75,050	175,943 89	2 33
Total (including "general officers")—				
Texas	5,449	1,386,065	2,821,668 66	2 03
Less "general officers"	21	7,594	61,042 00	8 03
Total (excluding "general officers")—				
Texas	5,428	1,378,471	2,760,626 66	2 00
Distribution of above:				
General administration	286	72,251	220,343 27	3 04
Maintenance of way and structures	2,166	471,592	714,723 85	1 51
Maintenance of equipment	1,111	327,447	649,160 63	1 71
Conducting transportation	1,866	514,775	1,237,431 91	2 40
Total (including "general officers")	5,449	1,386,065	2,821,668 66	2 03
Less "general officers"	21	7,594	61,042 00	8 03
Total (excluding "general officers")	5,428	1,378,471	2,760,626 66	2 00
Total (including "general officers")—entire line				

438 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 60, observing that references to "page 35" in the second paragraph do not apply to filling out page 63, unless data returned on page 35 of the Annual Report to the Interstate Commerce Commission is used.

Explanatory Remarks.

The mileage of switching trains is computed by allowing seventy-five (75) miles per train per day of twelve hours or less and ten (10) miles per hour for all overtime.

438 (63) *Passenger and Freight and Train Mileage—Entire Line.*

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars.	Cts.	Mills.
Passenger traffic:				
Number of passengers carried earning revenue	708,266			
Number of passengers carried one mile	36,560,780			
Average distance carried	51.64			
Total passenger revenue		915,865	84	
Average amount received from each passenger		1	29	306
Average receipts per passenger per mile			2	504
Estimated cost of carrying each passenger one mile			2	992
Total passenger earnings		1,112,319	69	
Passenger earnings per mile of road		1,051	33	
Passenger earnings per train mile		1	06	037
Freight traffic:				
Number of tons carried of freight earning revenue	1,564,093			
Number of tons carried one mile	271,465,674			
Average distance haul of one ton	173.56			
Total freight revenue		3,909,974	31	
Average amount received for each ton of freight		2	49	982
Average receipts per ton per mile			1	440
Estimated cost of carrying one ton one mile			1	357
Total freight earnings		3,918,066	66	
Freight earnings per mile of road		3,703	85	
Freight earnings per train mile		1	34	135
Passenger and freight:				
Passenger and freight revenue		4,825,839	15	
Passenger and freight revenue per mile of road		4,561	27	
Passenger and freight earnings		5,030,986	35	
Passenger and freight earnings per mile of road		4,755	18	
Gross earnings from operation		5,060,538	38	
Gross earnings from operation per mile of road		4,783	12	
Expenses		4,775,282	56	
Expenses per mile of road		4,513	50	
Train mileage:				
Miles run by passenger trains	1,019,325			
Miles run by freight trains	2,832,429			
Miles run by mixed trains	118,669			
Total mileage trains earning revenue	3,970,423			
Miles run by switching trains	699,177			
Miles run by construction and other trains	103,313			
Grand total train mileage	4,772,913			
Mileage of loaded freight cars—north or east	13,428,352			
Mileage of loaded freight cars—south or west	10,228,554			
Mileage of empty freight cars—north or east	10,763,449			
Mileage of empty freight cars—south or west	4,202,327			
Average number of freight cars in train	16.72			
Average number of loaded cars in train	11.55			
Average number of empty cars in train	5.19			
Average number of tons of freight in train	95.84			
Average number of tons of freight in each loaded car	8.31			

438 (70) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 70," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

Renewals of Rails and Ties—State of Texas.

New rails laid during year.

Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.
Iron		None.	
Total iron			
Steel	3,447.09	61 lbs.	41 39
Total steel	3,447.09	61 lbs.	41 39

New ties laid during year.

Kind.	Number.	Average price at distributing point.
Oak	256,903	43.4
Cedar	43,092	
Pine	7,406	
Cypress	240,389	
Total	626,790	43.4

Consumption of Fuel by Locomotives—State of Texas.

Locomotives.	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
Passenger		39,803.00	542.64		40,169.43	1,103,816	72.78
Freight		115,002.55	1,577.55		116,104.12	3,186,642	72.87
Switching		27,308.34	389.53		27,568.41	699,717	78.80
Construction		9,780.78	136.50		9,871.78	278,611	70.09
Total		191,945.67	2,655.09		193,713.74	5,268,786	73.53
Average cost at distributing point		3.43	2.00		3.43		

Endorsed on cover: Case No. 15,554. W. Texas C. C. U. S. Term No., 1170. John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, appellants, *vs.* The Farmers' Loan & Trust Company, trustee, and The Gulf, Colorado & Santa Fe Railway Company. Filed March 31st, 1894.